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CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 1160

Introduced by Assembly Members Shelley and Alquist

(Principal coauthors: Senators Burton and Vasconcellos)

(Coauthors: Assembly Members Aanestad, Bates, Corbett, Dutra, Gallegos, Havice, Honda, Jackson, Keeley, Knox, Kuehl, Lempert, Longville, Lowenthal, Romero, Steinberg, Strom-Martin, Thomson, Vincent, Washington, and Wildman)

~~(Coauthors: Senators Baca, Burton, Dunn, Ortiz, Perata, and Vasconcellos)~~

(Coauthors: Senators Baca, Dunn, Ortiz, and Perata)

February 25, 1999

An act to ~~add Sections 12528.5 and 27491.42~~ *add Section 12528.5* to the Government Code, to amend Sections 1267.5, 1276.5, 1333, 1336.2, 1337.1, 1337.2, 1337.3, ~~1420, 1422, 1424, 1428, 1430, 1438, 1599.1, and 7183~~ of, to ~~add Sections 1254.7 and 1325.1~~ to, and to ~~repeal and add Section 1417.1~~ of, *1417.3, 1422, 1424, 1430, 1436, 1438, and 1599.1* of, and to *add Sections 1276.6, 1325.1, 1417.15, 1417.4, 1420.05, 1424.05, and 1428.05* to, the Health and Safety Code, and to amend Section ~~14124.7~~ of

15630 of, and to add Section 14126.02 to, the Welfare and Institutions Code, relating to health facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 1160, as amended, Shelley. Long-term health care facilities: *skilled nursing facilities*.

(1) Existing law establishes in the office of the Attorney General the Bureau of Medi-Cal Fraud which is authorized to conduct a statewide program for investigating and prosecuting, and referring for prosecution, violations of all applicable laws pertaining to fraud in the administration of the Medi-Cal program.

This bill would require the bureau to annually submit to the Legislature a report on the nature and extent of crimes in this state against patients in health facilities receiving payments from the Medi-Cal program and the response of the criminal justice system to those crimes.

~~(2) Existing law requires the coroner to inquire into and determine the circumstance, manner, and cause of any death that occurs under certain conditions.~~

~~This bill would authorize the coroner to request copies of certain medical records of a deceased resident of a nursing facility who died within 31 days of the request. The bill would authorize the coroner to transmit copies of the records to the Director of Health Services if the coroner believes that an investigation is warranted or the State Department of Health Services requests the records.~~

~~(3) Existing law provides for the licensure and regulation of health facilities, including nursing facilities, administered by the State Department of Health Services. Violations of the provisions regulating health facilities are subject to criminal sanction.~~

~~This bill would require a nursing facility, upon the death of a resident of the facility, to submit to the coroner specified medical records of the deceased resident within 16 hours of the request of the coroner.~~

~~(4) Existing law requires each applicant for a license to operate a skilled nursing facility or intermediate care facility~~

to make certain disclosures regarding ownership and officers to the department.

This bill would revise these disclosure requirements. The bill would require that the information required by these disclosure provisions be included in the department's automated certification licensing administration information management system. The bill would require the department to develop and implement regulations for purposes of these provisions.

~~(5)~~

(3) Existing law requires the department to adopt regulations setting forth the minimum number of equivalent nursing hours per patient required in skilled nursing and intermediate care facilities.

This bill would state findings and declarations of the Legislature regarding designated minimum goals for direct care staffing. The bill would require that the minimum number of actual nursing hours per patient required in skilled nursing facilities start at ~~3.2~~ 3.0 hours, effective January 1, 2000, and increase as provided in the bill to ~~3.5~~ 3.6 hours, effective January 1, 2003. The bill would provide that the minimum goals for direct care staffing declared by the Legislature and the minimum number of nursing hours per patient that would be required in a skilled nursing facility under the bill shall only become effective to the extent Medi-Cal rates are prospectively adjusted and funding is appropriated for this purpose in the annual Budget Act.

~~(6)~~

(4) Existing law authorizes the director to file a petition in the superior court for appointment of a receiver for any long-term health care facility whenever certain conditions exist, including, whenever circumstances exist indicating that continued management of the facility by the current licensee would present a substantial probability or imminent danger of serious physical harm or death to patients, as specified.

This bill would authorize the director to appoint a temporary manager *for a skilled nursing facility and an intermediate care facility as defined* when (a) the residents of the ~~long-term health care~~ facility are in immediate danger of death or permanent injury by virtue of the failure to comply



with federal or state requirements or (b) the facility fails to comply with requirements applicable when patients need to be transferred as a result of a change in the status of license or operation of the facility and the department determines that the facility is unwilling or unable to meet those requirements. The bill would require the department to adopt, by December 31, 2000, regulations for the administration of this provision.

~~(7)~~

(5) Existing law provides for the reimbursement of the state for the salary of a receiver from the revenue of the facility and provides that if the revenues are inadequate the reimbursement amount shall constitute a lien upon the assets of the facility.

This bill would apply these provisions, in addition, to the salary of a temporary manager. The bill would provide, instead, that if the revenues of the facility are inadequate, the reimbursement amount shall constitute a lien upon the assets of the licensee or ~~any person or entity with 10% or greater equity interest in the licensee~~ *the licensee's parent or subsidiary corporations.*

~~(8)~~

(6) Existing law requires a long-term care facility to submit a proposed relocation plan for affected patients to the department for comment if 10 or more patients are likely to be transferred due to any voluntary change in the status of the license or operation of a facility.

This bill would ~~extend this provision to apply~~ *require skilled nursing and intermediate care facilities to submit the proposed relocation plan* if 10 or more patients are likely to be transferred due to any involuntary change in the status of the license or operation of the facility.

~~(9)~~

(7) Existing law requires a skilled nursing or intermediate care facility to adopt an approved training program that meets standards established by the department. Existing law requires that the precertification training program consist of specified hours of classroom training and instructional content.



This bill would revise the precertification training program requirements to increase the minimum classroom hours of training required and add certain resident abuse prevention, recognition, and reporting instruction.

~~(10)–~~

(8) Existing law sets forth certification requirements for certified nurse assistants.

This bill would prohibit an uncertified nurse assistant from providing direct patient care in a skilled nursing or intermediate care facility unless certain requirements are met.

~~(11)–~~

(9) Existing law requires the department to prepare and maintain a list of approved training programs for nurse assistant certification. Existing law specifies certain requirements for an approved training program *of a skilled nursing or intermediate care facility*.

This bill would require these training programs to meet certain requirements, ~~some of which would become effective commencing January 1, 2005. The bill would make certain requirements under existing law inoperative on January 1, 2005.~~ The bill would require the department, in consultation with the State Department of Education and other appropriate organizations, to perform various duties with regard to the curriculum and examinations for approved training programs and career ladder opportunities for certified nurse assistants.

~~(12)–~~

(10) Existing law, the Long-Term Care, Health, Safety, and Security Act of 1973, declares the intent of the Legislature to establish a citation system for the imposition of civil sanctions against long-term health care facilities in violation of state laws and regulations relating to patient care, an inspection and reporting system, and a provisional licensing mechanism.

~~This bill would declare the intent of the Legislature to establish, instead, an effective enforcement system and a provisional licensing mechanism.~~

~~The bill would specify available remedies against a long-term health care facility for a violation of state or federal requirements. The bill would authorize the director to issue~~

a provisional license to a licensee *of skilled nursing and intermediate care facilities* if certain conditions exist. The bill would require the department to adopt regulations for the administration of this provision.

The bill would require ~~a long-term care facility~~ *skilled nursing and intermediate care facilities* to post notice as provided under the bill if certain remedies are imposed for a violation of state or federal requirements. The bill would also make any violation that results in the imposition of these remedies a class “B” violation.

~~(13)–~~

~~(11) Existing law requires the department to promote quality in long-term health care facility services activities.~~

~~This bill would require the department to integrate additional quality assurance activities into the department’s ongoing survey and enforcement process.~~

~~This bill would require the department to establish a pilot program to develop, and to test the viability of, a specified process designed to be an alternative to the long-term health care facility enforcement system in effect prior to January 1, 2000. The pilot program, among other things, would define specific facilities that shall participate in the pilot program and conduct identified portions of the state and federal survey in facilities comprising the pilot program on a constant basis throughout the year.~~

~~(12) Existing law requires the department to assign an inspector to make a preliminary review of any complaint received against a long-term health care facility and notify the complainant of the name of the assigned inspector.~~

~~This bill would define complaint for purposes of this provision and require~~ *revise these provisions with regard to skilled nursing and intermediate care facilities by requiring* the department to notify the complainant of the assigned inspector’s name within 5 working days of the receipt of the complaint. The bill would require the department to make an onsite inspection or investigation within 24 hours of the receipt of a complaint in any case in which there is a serious threat of imminent danger of death or serious bodily harm. The bill would require the department to provide certain notice to the complainant prior to the commencement of the

onsite inspection and *to the complainant and the facility* within 10 working days of completion of the complaint investigation.

~~(14)–~~

(13) Existing law requires a copy of any citation issued against a long-term health care facility as a result of certain complaint procedures to be sent to each complainant.

This bill would require that the copy of ~~the~~ *a citation issued against designated skilled nursing and intermediate care facilities* be sent to each complainant by certified or registered mail.

(14) *Existing law requires the department to conduct annual inspections of long-term health care facilities, except facilities that have not had serious violations within the last 12 months, and in any case to inspect every facility at least once every 2 years.*

This bill would require that the department vary the cycle for conducting inspections of skilled nursing and intermediate care facilities to reduce the predictability of the inspections.

~~(15) Existing law requires all long-term care facilities to report to the department any changes in the nursing home administrator or the director of nursing services within 10 calendar days of the changes.~~

~~This bill would require the State Board of Nursing Home Administrators of the State of California to maintain an employment record for each long-term care nursing home administrator and the Board of Registered Nurses to maintain an employment record for each director of nursing services as provided under this bill. The bill would require these boards to post these employment records on the Internet.~~

~~(16) Existing law classifies a citation issued against long-term care facilities according to the nature of the violation, in order of decreasing seriousness, as class “AA,” class “A,” and class “B” violations, and provides for various civil penalties.~~

This bill would increase the civil penalties *for a skilled nursing facility and an intermediate care facility as defined* with regard to these violations. *The bill would require that citations issued to these facilities be issued within one year of the date the department was first notified of the violation, or*

within one year of the date of the annual survey, whichever is later.

The bill would require the department to convene a workgroup to examine the process used to determine when a long-term care facility has done what might be reasonably be expected to comply with a regulation for purposes of the issuance and appeal of citations.

~~(17)–~~

(16) Existing law specifies procedures for a licensee of a long-term health care facility who desires to contest a citation or the proposed assessment of a civil penalty.

This bill would revise this process *with regard to a skilled nursing facility or an intermediate care facility as defined*, to require that the licensee first post security as provided in the bill to contest a citation, or in the alternative complete the contesting and appeals process and if the citation and civil penalty is upheld, pay the civil penalty with interest as provided in the bill.

~~(18)–~~

(17) Existing law requires that costs or penalties assessed pursuant to the provisions regulating long-term health care facilities be paid within 30 days of the date the decision regarding the penalties becomes final and requires the department to withhold any payment under the Medi-Cal program until such a debt is satisfied, unless the department determines that it would cause hardship to the facility or to patients or residents of the facility.

This bill, *for purposes of a skilled nursing facility or intermediate care facility as defined*, would delete the requirement that any costs and penalties assessed be paid within 30 days of the date the decision becomes final. ~~The bill~~ and would require the department to withhold any payment under the Medi-Cal program, without the specified exception.

~~(19) Existing law provides that, except where the department has taken action and the violations have been corrected to its satisfaction, any licensee of a long-term health care facility who commits a class “A” or “B” violation may be enjoined from permitting the violation to continue or may be sued for civil damages. Existing law limits the amount of civil~~

~~damages that may be recovered in an action brought under this provision to the maximum amount of civil penalties which could be assessed on account of the violation or violations.~~

~~This bill would extend the authority to enjoin the violations of a long-term health care facility under this provision to apply to class “AA” violations and authorize suit for reasonable costs and attorney fees.~~

~~(20)–~~

(18) Existing law authorizes a resident or patient of a skilled nursing or intermediate care facility to bring civil action against a licensee of the facility who violates any rights set forth in the Patients Bill of Rights under state regulations. The licensee is liable for up to \$500.

~~This bill would authorize, instead, this civil action for violations of any rights of the resident or patient as set forth under state and federal law and would increase the maximum liability to \$25,000 a range of \$1,000 to \$2,500.~~

(19) Existing law requires the department to provide for additional and ongoing training for inspectors charged with implementation of provisions regulating long-term health care facilities in investigative techniques and standards relating to the quality of care provided by long-term health care facilities.

This bill would require the department to develop an interdisciplinary skilled nursing facility training program to educate and inform skilled nursing facility staff, inspectors, and advocates.

~~(21)–~~

(20) Existing law requires the department to review the effectiveness of certain enforcement provisions in maintaining the quality of care provided by long-term care facilities and submit a report on the enforcement activities.

This bill would require the department to submit the report on or before December 1, 2000, and annually thereafter, regarding these enforcement activities.

~~(22)–~~

(21) Existing law requires skilled nursing and intermediate care facilities to establish and make available, as prescribed, written policies regarding the rights of patients. Existing law requires that the procedures ensure that each patient

admitted to the facility has certain rights and is notified of certain facility obligations, in addition to those specified by regulation.

This bill would add to the list of rights of a patient *of, and the obligations of a facility, skilled nursing and intermediate care facilities* that a resident of a nursing facility may appeal the facility's refusal to readmit him or her, if the resident has been hospitalized in an acute care hospital and asserts a right to readmission pursuant to bed hold provisions or readmission rights of either state or federal law. The bill would require that the appeal be adjudicated by a state hearing officer designated to adjudicate appeals of transfers and discharges of nursing facility residents. The bill would require the facility to readmit the resident who has filed an appeal pending the final determination of the hearing officer.

~~(23) Existing law prohibits a long-term health care facility that participates as a provider under the Medi-Cal program from transferring or seeking to evict out of the facility any resident as a result of the resident changing his or her manner of purchasing the services from private payment or Medicare to Medi-Cal benefits and for whom an eligibility determination has not yet been made.~~

~~This bill would specify that transferring a resident within the facility, or seeking to evict a resident out of the facility is prohibited under this provision, except that a facility may transfer a resident from a private room to a semi-private room if the resident changes to Medi-Cal payment status. The bill would provide that this provision applies to residents who have made a timely application to Medi-Cal benefits and for whom an eligibility determination has not yet been made.~~

~~(22) Existing law provides for the reimbursement of long-term care facilities providing services under the Medi-Cal program according to an established methodology.~~

~~This bill would require the department to establish, no later than January 1, 2001, a new Medi-Cal reimbursement system for skilled nursing facilities, excluding distinct part nursing facilities, as defined.~~

~~The bill would require the department to establish the minimum number of nursing hours for skilled nursing facilities as provided under the bill and implement the~~

standards concurrent with the implementation of the new system.

The bill would require that the total reimbursement to skilled nursing facilities under the Medi-Cal program shall comply with the applicable provisions of the state medicaid plan and shall be subject to an appropriation by the Legislature.

(23) Existing law requires certain mandated reporters who are responsible for care and custody of, or provide care or services to, elder or dependent adults to report known or suspected instances of abuse that has occurred at a long-term care facility, with specified exceptions, to the local ombudsman or the local law enforcement agency. Existing law requires the local ombudsman or the local law enforcement agency to report any case of known or suspected abuse to the department and any case of known or suspected criminal activity to the Bureau of Medi-Cal Fraud, as soon as is practical.

This bill would require, in addition, that the department report any case of known or suspected criminal activity to the bureau as soon as is practical. The bill would also require that all of the reports of known or suspected criminal activity made by the department, local ombudsman, and local law enforcement agency to the bureau be made as soon as is practical, unless it appears that any delay would cause destruction of evidence or any other disturbance of a crime scene by nonpeace officer personnel, in which case, the report shall be made immediately.

This bill would state the intent of the Legislature with regard to studying the manner in which long-term health care facilities that participate as providers under the Medi-Cal program make transfers within the facility, or evict out of the facility, any resident as a result of the resident changing his or her manner of purchasing the services from private payment or to Medicare to Medi-Cal. The bill would also state the intent of the Legislature to strive for uniformity and consistency in its statewide practices in surveying long-term health care facilities so that variations will be lessened.

This bill would proclaim the week commencing on the first Monday of May as “Long-Term Care Ombudsman Week” in



recognition of the valuable services provided by long-term care ombudsmen.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 12528.5 is added to the
2 Government Code, to read:

3 12528.5. The Bureau of Medi-Cal Fraud shall annually
4 submit to the Legislature a report on the nature and
5 extent of crimes in this state against patients in health
6 facilities receiving payments from the Medi-Cal program
7 and the response of the criminal justice system to those
8 crimes.

9 ~~SEC. 2. Section 27491.42 is added to the Government~~
10 ~~Code, to read:~~

11 ~~27491.42. (a) The coroner may request from a~~
12 ~~nursing facility, and shall receive within 16 hours of the~~
13 ~~request, copies of medical records of a deceased resident~~
14 ~~that cover the last year prior to the resident's death that~~
15 ~~are kept in accordance with regulations adopted~~
16 ~~pursuant to Section 1275 of the Health and Safety Code.~~

17 ~~(b) The coroner may transmit copies of a deceased~~
18 ~~resident's records to the Director of Health Services, or~~
19 ~~the director's designee if the coroner believes that an~~
20 ~~investigation is warranted or the State Department of~~
21 ~~Health Services requests the records.~~

22 ~~(c) This section shall only entitle a coroner to the~~
23 ~~medical records of a resident whose death occurred~~
24 ~~within 31 days of the request. In any other case, it is the~~
25 ~~intent of the Legislature that the coroner shall acquire~~
26 ~~the records in any other manner available under the law.~~

27 ~~SEC. 3. Section 1254.7 is added to the Health and~~
28 ~~Safety Code, to read:~~

29 ~~1254.7. The nursing facility shall submit to the~~
30 ~~coroner, upon the coroner's request, copies of the~~
31 ~~medical records of a deceased resident that cover the last~~
32 ~~year prior to the resident's death that are kept in~~
33 ~~accordance with regulations adopted pursuant to Section~~

~~1275. The nursing facility shall submit the copies of the medical records within 16 hours of the request of the coroner.~~

~~SEC. 4.—~~

SEC. 2. Section 1267.5 of the Health and Safety Code is amended to read:

1267.5. (a) (1) Each applicant for a license to operate a skilled nursing facility or intermediate care facility shall disclose to the state department the name and business address of each general partner if the applicant is a partnership, or each director and officer if the applicant is a corporation, and each person having a beneficial ownership interest of 5 percent or more in the applicant corporation or partnership.

(2) If any person described in paragraph (1) has served or currently serves as an administrator, general partner, trustee or trust applicant, sole proprietor of any applicant or licensee who is a sole proprietorship, executor, or corporate officer or director of, or has held a beneficial ownership interest of 5 percent or more in, any other skilled nursing facility or intermediate care facility or in any community care facility licensed pursuant to Chapter 3 (commencing with Section 1500) of this division, the applicant shall disclose the relationship to the state department, including the name and current or last address of the health facility or community care facility and the date the relationship commenced and, if applicable, the date it was terminated.

(3) (A) If the facility is operated by, or proposed to be operated in whole or part under, a management contract, the names and addresses of any person or organization, or both, having an ownership or control interest of 5 percent or more in the management company shall be disclosed to the state department.

(B) If the management company is a subsidiary of one or more other organizations, the information shall include the names and addresses of the parent organizations of the subsidiary and the names and addresses of any officer or director of the parent

1 organizations. The failure to comply with this
2 subparagraph may result in action to revoke or deny a
3 license. However, once the information that is required
4 under this subparagraph is provided, the action to revoke
5 the license shall terminate.

6 (4) If the applicant or licensee is a subsidiary of one or
7 more other organizations, the information shall include
8 the names and addresses of the parent organizations of
9 the subsidiary and the names and addresses of any officer
10 or director of the parent organizations.

11 (5) The information required by this subdivision shall
12 be provided to the department upon initial application
13 for licensure, and any change in the information shall be
14 provided to the department within 30 calendar days of
15 that change.

16 (6) Except as provided in subparagraph (B) of
17 paragraph (3), the failure to comply with this section may
18 result in action to revoke or deny a license.

19 (7) The information required by this section shall be
20 made available to the public upon request, shall be
21 included in the public file of the facility, and shall be
22 included in the department's automated certification
23 licensing administration information management
24 system.

25 (8) The department shall develop and implement
26 regulations to enact this subdivision.

27 (b) On and after January 1, 1990, no person may
28 acquire a beneficial interest of 5 percent or more in any
29 corporation or partnership licensed to operate a skilled
30 nursing facility or intermediate care facility, or in any
31 management company under contract with a licensee of
32 a skilled nursing facility or intermediate care facility, nor
33 may any person become an officer or director of, or
34 general partner in, a corporation, partnership, or
35 management company of this type without the prior
36 written approval of the state department. Each
37 application for departmental approval pursuant to this
38 subdivision shall include the information specified in
39 subdivision (a) as regards the person for whom the
40 application is made.

1 The state department shall approve or disapprove the
2 application within 30 days after receipt thereof, unless the
3 state department, with just cause, extends the application
4 review period beyond 30 days.

5 (c) The state department may deny approval of a
6 license application or of an application for approval under
7 subdivision (b) if a person named in the application, as
8 required by this section, was an officer, director, general
9 partner, or owner of a 5-percent or greater beneficial
10 interest in a licensee of, or in a management company
11 under contract with a licensee of, a skilled nursing facility,
12 intermediate care facility, community care facility, or
13 residential care facility for the elderly at a time when one
14 or more violations of law were committed therein that
15 resulted in suspension or revocation of its license, or at a
16 time when a court-ordered receiver was appointed
17 pursuant to Section 1327, or at a time when a final
18 Medi-Cal decertification action was taken under federal
19 law. However, the prior suspension, revocation, or
20 court-ordered receivership of a license shall not be
21 grounds for denial of the application if the applicant
22 shows to the satisfaction of the state department (1) that
23 the person in question took every reasonably available
24 action to prevent the violation or violations that resulted
25 in the disciplinary action and (2) that he or she took every
26 reasonably available action to correct the violation or
27 violations once he or she knew, or with the exercise of
28 reasonable diligence should have known of, the violation
29 or violations.

30 (d) No application shall be denied pursuant to this
31 section until the state department first (1) provides the
32 applicant with notice in writing of grounds for the
33 proposed denial of application, and (2) affords the
34 applicant an opportunity to submit additional
35 documentary evidence in opposition to the proposed
36 denial.

37 (e) Nothing in this section shall cause any individual to
38 be personally liable for any civil penalty assessed pursuant
39 to Chapter 2.4 (commencing with Section 1417) of this

1 division or create any new criminal or civil liability
2 contrary to general laws limiting that liability.

3 (f) This section shall not apply to a bank, trust
4 company, financial institution, title insurer, controlled
5 escrow company, or underwritten title company to which
6 a license is issued in a fiduciary capacity.

7 (g) As used in this section, “person” has the same
8 meaning as specified in Section 19.

9 (h) This section shall not apply to the directors of a
10 nonprofit corporation exempt from taxation under
11 Section 23701d of the Revenue and Taxation Code that
12 operates a skilled nursing facility or intermediate care
13 facility in conjunction with a licensed residential facility,
14 where the directors serve without financial
15 compensation and are not compensated by the nonprofit
16 corporation in any other capacity.

17 ~~SEC. 5.—~~

18 *SEC. 3.* Section 1276.5 of the Health and Safety Code
19 is amended to read:

20 1276.5. (a) (1) The Legislature finds and declares
21 that one major factor in the quality of care in skilled
22 nursing facilities in California is the direct care staffing in
23 those facilities.

24 (2) It is the intent of the Legislature that over time
25 direct care staffing in skilled nursing facilities shall
26 increase in order to improve the quality of care in skilled
27 nursing facilities.

28 (3) The Legislature finds and declares that the goal for
29 direct care staffing in skilled nursing facilities is as follows:

30 (A) For registered nurses and licensed vocational
31 nurses, one nurse to 15 patients on the day shift, one nurse
32 to 20 patients on the evening shift, and one to 30 patients
33 on the night shift.

34 (B) For certified nurse assistants, one certified nurse
35 assistant to five patients on the day shift, one certified
36 nurse assistant to 10 patients on the evening shift, and one
37 certified nurse assistant to 15 patients on the night shift.

38 (C) The minimum goals set forth in this paragraph
39 shall only become effective to the extent Medi-Cal rates



1 are prospectively adjusted and funding is appropriated
2 for this purpose in the annual Budget Act.

3 (4) The Legislature finds and declares that increases in
4 direct care staffing are required to begin immediately
5 and to be increased over time to reduce the current
6 understaffing at many skilled nursing facilities.

7 (b) The department shall adopt regulations setting
8 forth the minimum number of actual nursing hours per
9 patient per day required in skilled nursing and
10 intermediate care facilities, subject to the specific
11 requirements of Section 14110.7 of the Welfare and
12 Institutions Code. However, notwithstanding Section
13 14110.7 of the Welfare and Institutions Code or any other
14 law, the minimum number of actual nursing hours per
15 patient required in a skilled nursing facility shall be as
16 follows:

17 (1) Effective January 1, 2000, ~~3.2~~ 3.0 hours.

18 (2) Effective January 1, 2001, ~~3.3~~ 3.2 hours.

19 (3) Effective January 1, 2002, 3.4 hours.

20 (4) Effective January 1, 2003, ~~3.5~~ 3.6 hours.

21 (c) The minimum number of nursing hours per
22 patient required in a skilled nursing facility set forth in
23 subdivision (b) shall only become effective to the extent
24 Medi-Cal rates are prospectively adjusted and funding is
25 appropriated for this purpose in the annual Budget Act.

26 *Nothing in this section is intended to encourage the*
27 *replacement of licensed staff with unlicensed staff.*

28 (d) For the purposes of this section, “nursing hours”
29 means the number of actual hours of work performed per
30 patient day by aides, nursing assistants, orderlies,
31 registered nurses and licensed vocational nurses (except
32 directors of nursing in facilities of 60 or larger capacity)
33 and, in the distinct part of facilities and freestanding
34 facilities providing care for the developmentally disabled
35 or mentally disordered, by licensed psychiatric
36 technicians who perform direct nursing services for
37 patients in skilled nursing and intermediate care
38 facilities, except when the skilled nursing and
39 intermediate care facility is licensed as a part of a state
40 hospital.

(e) (1) In implementing Section 23 of Assembly Bill 1160 of the 1999-2000 Regular Session, the department 14126.02 of the Welfare and Institutions Code, the department shall adopt regulations setting forth the minimum number of actual nursing hours per patient on the basis of care needs as determined through a standard resident assessment process.

(2) It is the intent of the Legislature that the provisions of this section, shall cease to be operative upon the implementation of an acuity-based system under Section 23 of Assembly Bill 1160 of the 1999-2000 Regular Session. 14126.02 of the Welfare and Institutions Code.

(f) Notwithstanding Section 1276, the department shall require the utilization of a registered nurse at all times if the department determines that the services of a skilled nursing and intermediate care facility require the utilization of a registered nurse.

(g) (1) Except as otherwise provided by law, the administrator of an intermediate care facility/developmentally disabled, intermediate care facility/developmentally disabled habilitative, or an intermediate care facility/developmentally disabled nursing shall be either a licensed nursing home administrator or a qualified mental retardation professional as defined in Section 483.430 of Title 42 of the Code of Federal Regulations.

(2) To qualify as an administrator for an intermediate care facility for the developmentally disabled, a qualified mental retardation professional shall complete at least six months of administrative training or demonstrate six months of experience in an administrative capacity in a licensed health facility, as defined in Section 1250, excluding those facilities specified in subdivisions (e), (h), and (i).

SEC. 6.—

SEC. 4. Section 1325.1 is added to the Health and Safety Code, to read:

1325.1. (a) It is the intent of the Legislature in enacting this section to empower the State Department of Health Services to take quick, effective action to

1 protect the health and safety of residents of ~~long-term~~
2 ~~health-care skilled nursing facilities and intermediate~~
3 care facilities and to minimize the effects of transfer
4 trauma that accompany the abrupt transfer of elderly and
5 disabled residents.

6 (b) For purposes of this section, ~~“temporary the~~
7 ~~following definitions shall apply:~~

8 (1) “Skilled nursing facility” shall have the same
9 meaning as specified in subdivision (c) of Section 1250.

10 (2) “Intermediate care facility” shall have the same
11 meaning as specified in subdivision (d) of Section 1250.

12 (3) “Temporary manager” means the person
13 appointed temporarily by the department as a substitute
14 facility manager or administrator with authority to hire,
15 terminate, or reassign staff, obligate facility funds, alter
16 facility procedures, and manage the facility to correct
17 deficiencies identified in the facility’s operation.

18 (c) The director may appoint a temporary manager
19 when any of the following circumstances exist:

20 (1) The residents of the ~~long-term health-care skilled~~
21 ~~nursing facility or intermediate care~~ facility are in
22 immediate danger of death or permanent injury by virtue
23 of the failure of the ~~long-term care~~ facility to comply with
24 federal or state requirements applicable to the operation
25 of the ~~long-term health-care~~ facility.

26 (2) As a result of a change in the status of the license
27 or operation of a ~~long-term health-care skilled nursing~~
28 ~~facility or an intermediate care~~ facility, the facility is
29 required to comply with Section 1336.2, the facility fails
30 to comply with Section 1336.2, and the department has
31 determined that the facility is unwilling or unable to meet
32 the requirements of Section 1336.2.

33 (d) (1) The appointment of a temporary manager
34 pursuant to this section shall become effective
35 immediately and shall authorize the temporary manager
36 to act pursuant to this section *upon the department’s*
37 *personal service upon the administrator and licensee of*
38 *a statement of cause and concerns specifying the factual*
39 *and legal basis for the imposition of the temporary*
40 *manager. The statement of cause and concerns shall be*

1 *supported by the declaration of the director or the*
2 *director's authorized designee.*

3 (2) The temporary manager shall take all necessary
4 steps and make best efforts to eliminate immediate
5 danger of death or permanent injury to residents or
6 complete transfers of residents to alternative placements
7 pursuant to Section 1336.2.

8 (e) (1) The licensee of a ~~long-term health care skilled~~
9 ~~nursing facility or an intermediate care~~ facility may
10 contest the appointment of the temporary manager at
11 any time by filing a petition for an order to terminate the
12 appointment of the temporary manager with the Office
13 of Administrative Hearings. The office shall assign the
14 case to an administrative law judge. A copy of the petition
15 with a cover sheet, stating in at least 24-point type that a
16 written response is required, shall be delivered to the
17 office of the director of the department.

18 ~~(2) If a licensee of a long-term health care facility~~
19 ~~contests the appointment of the temporary manager by~~
20 ~~filing a petition with the administrative law judge, the~~
21 ~~department shall file an answer with the administrative~~
22 ~~law judge and the facility within 10 business days of the~~
23 ~~receipt of notice that the licensee has petitioned the~~
24 ~~administrative law judge. The answer of the department~~
25 ~~shall allege the facts applicable under subdivision (e)~~
26 ~~upon which the appointment of the temporary manager~~
27 ~~is based and shall be supported by a declaration of the~~
28 ~~director or another official authorized by the director to~~
29 ~~execute the declaration.~~

30 ~~(3)–~~

31 (2) The administrative law judge shall have a noticed
32 hearing on the petition for an order to terminate the
33 appointment of the temporary manager within ~~15~~ 5
34 business days of the filing of the petition by the licensee
35 of the ~~long-term health care facility~~ facility and shall issue
36 a decision on the petition within five business days of the
37 hearing. This five-day period is a mandatory timeframe
38 for department action, unless it is extended by the
39 agreement of all of the involved parties. At the hearing,
40 the administrative law judge shall uphold the

1 appointment of the temporary manager if the
2 department proves, by a preponderance of the evidence,
3 that the circumstances specified in subdivision (c) apply
4 to the facility. The administrative law judge shall order
5 the appointment of the temporary manager terminated
6 if the burden of proof is not satisfied.

7 ~~(4)–~~

8 (3) The decision of the administrative law judge sitting
9 alone on the petition for an order to terminate the
10 appointment of the temporary manager is ~~final~~ *subject to*
11 *judicial review as provided in Section 1094.5 of the Code*
12 *of Civil Procedure by the superior court sitting in the*
13 *county where the facility is located. This review may be*
14 *requested by the licensee of the facility or the*
15 *department by filing a petition seeking relief from the*
16 *order. The petition may also request the issuance of*
17 *temporary injunctive relief pending the decision on the*
18 *petition. The superior court shall hold a hearing within*
19 *five business days of the filing of the petition and shall*
20 *issue a decision on the petition within five days of the*
21 *hearing.*

22 (f) (1) If the licensee of the ~~long-term health care~~
23 *skilled nursing facility or intermediate care facility*
24 petitions the administrative law judge pursuant to
25 subdivision (e), the appointment of the temporary
26 manager by the director pursuant to this section shall
27 continue until it is terminated by the administrative law
28 judge or *by the superior court, or it shall continue* for 30
29 days from the date the administrative law judge *or the*
30 *superior court* upholds the appointment of the temporary
31 manager, *whichever is sooner.*

32 (2) At a subsequent hearing before the administrative
33 law judge, *the superior court, or both*, at the request of
34 the director, the administrative law judge, *the superior*
35 *court, or both*, may extend the appointment of the
36 temporary manager as follows:

37 (A) Upon a showing by the department that the
38 conditions specified in subdivision (c) continue to exist,
39 an additional 60 days.

(B) Upon a finding that the department is seeking a receiver, until the department has secured the services of a receiver pursuant to Article 8 (commencing with Section 1325) of Chapter 2.

(3) If the licensee of the ~~long-term health care~~ facility does not protest the appointment, it shall continue until the conditions described in subdivision (c) no longer exist or the department has secured the services of a receiver pursuant to Article 8 (commencing with Section 1325) of Chapter 2.

(4) If the administrative law judge extends the appointment of the temporary manager pursuant to this subdivision, the licensee may request review as provided in Section 1094.5 of the Code of Civil Procedure by the superior court as specified in paragraph (3) of subdivision (e).

(g) The department shall be represented by legal counsel within the department for purposes of court proceedings authorized under this section.

(h) At any time during the appointment of the temporary manager, the department may terminate the appointment if the circumstances described in subdivision (c) are corrected.

(i) The department shall adopt regulations for the administration of this section by December 31, 2000.

~~SEC. 7.—~~

SEC. 5. Section 1333 of the Health and Safety Code is amended to read:

1333. To the extent state funds are advanced or expended for the salary of the receiver or temporary manager or for other expenses in connection with the receivership or temporary management, the state shall be reimbursed from the revenues accruing to the facility. If the revenues are insufficient to reimburse the state, the unreimbursed amount shall constitute a lien upon the assets of the licensee, ~~or any person or entity with a 10 percent or greater equity interest in the licensee including, but not limited to, the licensed facility or other facilities owned or operated by the licensee or the~~

1 ~~proceeds from the sale or sales thereof. or the licensee's~~
2 ~~parent or subsidiary corporations.~~

3 ~~SEC. 8.—~~

4 SEC. 6. Section 1336.2 of the Health and Safety Code
5 is amended to read:

6 1336.2. (a) When patients are transferred due to any
7 change in the status of the license or operation of a
8 facility, including voluntary or involuntary termination of
9 a facility's Medi-Cal or Medicare certification, the facility
10 shall take reasonable steps to transfer affected patients
11 safely and minimize possible transfer trauma by, at a
12 minimum, doing all of the following:

13 (1) Medically assess, prior to transfer, the patient's
14 condition and susceptibility to adverse health
15 consequences, including psychosocial effects, in the
16 event of transfer. The patient's physician and surgeon, if
17 available, shall undertake this assessment. The assessment
18 shall provide recommendations, including counseling
19 and followup visits, for preventing or ameliorating
20 potential adverse health consequences in the event of
21 transfer.

22 (2) Provide, in accordance with these assessments,
23 counseling, and other recommended services, prior to
24 transfer, to any affected patient who may suffer adverse
25 health consequences due to transfer.

26 (3) Evaluate, prior to transfer, the relocation needs of
27 the patient and the patient's family and determine the
28 most appropriate and available type of future care and
29 services for the patient. The health facility shall discuss
30 the evaluation and medical assessment with the patient
31 or the patient's guardian, agent, or responsible party and
32 make the evaluation and assessment part of the medical
33 records for transfer.

34 (4) Inform, at least 30 days in advance of the transfer,
35 the patient or patient's guardian, agent, or responsible
36 party of alternative facilities that are available and
37 adequate to meet patient and family needs.

38 (5) Arrange for appropriate, future medical care and
39 services, unless the patient or patient's guardian has
40 otherwise made these arrangements. This requirement

1 does not obligate a facility to pay for future care and
2 services.

3 (b) The facility shall provide an appropriate team of
4 professional staff to perform the services required in
5 subdivision (a).

6 (c) The facility shall also give written notice to
7 affected patients or their guardians, agents, or
8 responsible parties advising them of the requirements in
9 subdivision (a) at least 30 days in advance of transfer. If
10 a facility is required to give written notice pursuant to
11 Section 1336, then the notice shall advise the affected
12 patient or the patient's guardian, agent, or responsible
13 party of the requirements in subdivision (a). If the
14 transfer is made pursuant to subdivision (f), the notice
15 shall include notification to the patient that the transfer
16 plan is available to the patient or patient's representative
17 free of charge upon request.

18 (d) In the event of a temporary suspension of a
19 facility's license pursuant to Section 1296, the 30-day
20 notice requirement in subdivision (c) shall not apply, but
21 the facility shall provide the relocation services required
22 in subdivision (a) unless the state department provides
23 the services pursuant to subdivision (e).

24 (e) The state department may provide, or arrange for
25 the provision of, necessary relocation services at a facility,
26 including medical assessments, counseling, and
27 placement of patients, if the state department
28 determines that these services are needed promptly to
29 prevent adverse health consequences to patients, and the
30 facility refuses, or does not have adequate staffing, to
31 provide the services. In these cases, the facility shall
32 reimburse the state department for the cost of providing
33 the relocation services. If a facility's refusal to provide the
34 relocation services required in subdivision (a) endangers
35 the health and safety of patients to be transferred, then
36 the state department may also request that the Attorney
37 General's office or the local district attorney's office seek
38 injunctive relief and damages in the same manner as
39 provided for in Chapter 5 (commencing with Section

1 17200) of Part 2 of Division 7 of the Business and
2 Professions Code.

3 (f) (1) If 10 or more patients are likely to be
4 transferred due to any voluntary ~~or involuntary~~ change
5 in the status of the license or operation of a facility,
6 including voluntary ~~or involuntary~~ termination of a
7 facility's Medi-Cal or Medicare certification, the facility
8 shall submit a proposed relocation plan for the affected
9 patients to the state department for comment, if any, at
10 least 45 days prior to the transfer of any patient. The plan
11 shall provide for implementation of the relocation
12 services in subdivision (a) and shall describe the
13 availability of beds in the area for patients to be
14 transferred, the proposed discharge process, and the
15 staffing available to assist in the transfers. The facility shall
16 submit its final relocation plan to the local ombudsperson,
17 and if different from the proposed plan, to the state
18 department, at least 30 days prior to the transfer of any
19 patient.

20 (2) *Notwithstanding paragraph (1), if 10 or more*
21 *patients are likely to be transferred from a skilled nursing*
22 *facility or an intermediate care facility, due to any*
23 *voluntary change in the status of the license or operation*
24 *of that facility, the facility shall submit a proposed*
25 *relocation plan in compliance with paragraph (1).*

26 ~~SEC. 9.—~~

27 SEC. 7. Section 1337.1 of the Health and Safety Code
28 is amended to read:

29 1337.1. A skilled nursing or intermediate care facility
30 shall adopt an approved training program that meets
31 standards established by the state department. The
32 approved training program shall consist of at least the
33 following:

34 (a) An orientation program to be given to newly
35 employed nurse assistants prior to providing direct
36 patient care in skilled nursing or intermediate care
37 facilities.

38 (b) Effective January 1, 2000, a precertification
39 training program consisting of at least 60 classroom hours
40 of training on basic nursing skills, patient safety and

1 rights, the social and psychological problems of patients,
2 and resident abuse prevention, recognition, and
3 reporting pursuant to subdivision (e), and at least 100
4 hours of supervised and on-the-job training clinical
5 practice. The 100 hours may consist of normal
6 employment as a nurse assistant under the supervision of
7 either the director of nurse training or a licensed nurse.
8 The 60 classroom hours of training may be conducted
9 within a skilled nursing or intermediate care facility or in
10 an educational institution. In such a precertification
11 training program, credit shall be given for the training
12 received in an approved precertification training
13 program adopted by another skilled nursing or
14 intermediate care facility. This subdivision shall not apply
15 to a skilled nursing or intermediate care facility that
16 demonstrates to the state department that it employs
17 only nurse assistants with a valid certification.

18 (c) Continuing in-service training to assure
19 continuing competency in existing and new nursing skills.

20 (d) Each facility shall consider including training
21 regarding the characteristics and method of assessment
22 and treatment of acquired immune deficiency syndrome
23 (AIDS).

24 (e) (1) Effective January 1, 2000, the approved
25 training program shall include a minimum of six hours of
26 instruction on preventing, recognizing, and reporting
27 instances of resident abuse utilizing those courses
28 developed pursuant to Section 13823.93 of the Penal Code
29 for hospital-based training centers.

30 (2) Effective January 1, 2000, a minimum of four hours
31 of instruction on preventing, recognizing, and reporting
32 instances of resident abuse shall be included within the
33 total minimum hours of continuing education required
34 and in effect as of January 1, 2000, for certified nursing
35 assistants.

36 ~~SEC. 10.~~—

37 *SEC. 8.* Section 1337.2 of the Health and Safety Code
38 is amended to read:

39 1337.2. (a) An applicant for certification as a certified
40 nurse assistant shall comply with each of the following:

1 (1) Be at least 16 years of age.

2 (2) Have successfully completed a training program
3 approved by the department, which includes an
4 examination to test the applicant's knowledge and skills
5 related to basic patient care services.

6 (3) Obtain a criminal record clearance pursuant to
7 Section 1338.5.

8 (b) The state department may establish procedures
9 for issuing certificates which recognize certification
10 programs in other states and countries.

11 (c) Upon written application, criminal record
12 clearance pursuant to Section 1338.5, and documentation
13 of passing an appropriate competency examination, the
14 state department may issue a certificate to any applicant
15 who possesses a valid state license as either a licensed
16 vocational nurse or a registered nurse issued by any other
17 state or foreign country, and who, in the opinion of the
18 state department, has the qualifications specified in this
19 article.

20 (d) Upon written application, criminal record
21 clearance pursuant to Section 1338.5, and documentation
22 of passing an appropriate examination, the state
23 department may issue a certificate to any applicant who
24 has completed the fundamentals of nursing courses in a
25 school for registered nurses, approved by the Board of
26 Registered Nursing, or in a school for licensed vocational
27 nurses, approved by the Board of Vocational Nurse and
28 Psychiatric Technician Examiners, which are
29 substantially equivalent to the certification training
30 program specified in this article.

31 (e) Every person certified as a nurse assistant under
32 this article may be known as a "certified nurse assistant"
33 and may place the letters CNA after his or her name when
34 working in a licensed health facility. An individual
35 working independently, providing personal care
36 services, may not advertise or represent himself or herself
37 as a certified nurse assistant.

38 (f) Any person holding a nurse assistant certificate
39 issued by the state department prior to January 1, 1988,
40 may continue to hold himself or herself out as a certified

1 nurse assistant until January 1, 1991. Thereafter, it shall be
2 unlawful for any person not certified under this article to
3 hold himself or herself out to be a certified nurse assistant.
4 Any person willfully making any false representation as
5 being a certified nurse assistant is guilty of a
6 misdemeanor.

7 (g) Any person who violates this article is guilty of a
8 misdemeanor and, upon a conviction thereof, shall be
9 punished by imprisonment in the county jail for not more
10 than 180 days, or by a fine of not less than twenty dollars
11 (\$20) nor more than one thousand dollars (\$1,000), or by
12 both such fine and imprisonment.

13 (h) Effective January 1, 2005, an uncertified nurse
14 assistant may provide direct patient care in a skilled
15 nursing facility or intermediate care facility only if the
16 uncertified nurse *assistant* is participating in an approved
17 training program and under supervision in accordance
18 with training program regulations. The hours of direct
19 care provided to residents by an uncertified nurse
20 assistant pursuant to this subdivision shall not be counted
21 as direct care hours by the facility *but shall be paid for by*
22 *the facility*.

23 ~~SEC. 11.~~

24 *SEC. 9.* Section 1337.3 of the Health and Safety Code
25 is amended to read:

26 1337.3. (a) (1) The state department shall prepare
27 and maintain a list of approved training programs for
28 nurse assistant certification. The list shall include training
29 programs conducted by skilled nursing or intermediate
30 care facilities, as well as local agencies and education
31 programs. Clinical portions of the training programs may
32 be obtained as on-the-job training, supervised by a
33 qualified director of staff development or licensed nurse.

34 (2) The following requirements shall become
35 effective January 1, 2005:

36 (A) All approved training programs shall be
37 conducted by an educational institution certified by the
38 department to provide the training with a curriculum
39 approved by the department.

1 (B) No educational institution certified by the
2 department to provide training under this article shall be
3 directly or indirectly affiliated with a skilled nursing or
4 intermediate care facility or an association of these
5 facilities.

6 (C) Clinical portions of the training program may be
7 obtained as on-the-job training supervised by a qualified
8 director of staff development or licensed nurse and
9 evaluated by the certified educational institution.

10 (b) It shall be the duty of the state department to
11 inspect a representative sample of training programs.
12 The state department shall protect consumers and
13 students in any training program against fraud,
14 misrepresentation, or other practices that may result in
15 improper or excessive payment of funds paid for training
16 programs. If the state department determines that any
17 training program is not complying with regulations,
18 notice thereof in writing shall be immediately given to
19 the program. If the program has not been brought into
20 compliance within a reasonable time, the program may
21 be removed from the approved list and notice thereof in
22 writing given to it. Programs removed under this article
23 shall be afforded an opportunity to request reinstatement
24 of program approval at any time.

25 (c) Notwithstanding provisions of Section 1337.1, the
26 approved training program shall consist of at least the
27 following:

28 (1) A 16-hour orientation program to be given to
29 newly employed nurse assistants prior to providing direct
30 patient care, and consistent with federal training
31 requirements for facilities participating in the Medicare
32 or medicaid programs.

33 (2) A certification training program consisting of at
34 least 60 classroom hours of training on basic nursing skills,
35 patient safety and rights, the social and psychological
36 problems of patients, and elder abuse recognition and
37 reporting pursuant to subdivision (e) of Section 1337.1, as
38 well as at least 100 hours supervised and on-the-job
39 training clinical practice. The 100 hours may consist of
40 normal employment as a nurse assistant under the

1 supervision of either the director of staff development or
2 a licensed nurse. The 60 classroom hours of training may
3 be conducted within a skilled nursing facility, an
4 intermediate care facility, or an educational institution.

5 (d) The state department, in consultation with the
6 State Department of Education and other appropriate
7 organizations, shall develop criteria for approving
8 training programs, that includes program content for
9 orientation, training, inservice and the examination for
10 testing knowledge and skills related to basic patient care
11 services and shall develop a plan that identifies and
12 encourages career ladder opportunities for certified
13 nurse assistants. This group shall also recommend, and the
14 department shall adopt, regulation changes necessary to
15 provide for patient care when facilities utilize
16 noncertified nurse assistants who are performing direct
17 patient care. The requirements of this subdivision shall be
18 established by January 1, 1989. This subdivision shall
19 become inoperative on January 1, 2005.

20 (e) (1) On or before January 1, 2003, the state
21 department, in consultation with the State Department
22 of Education, *the American Red Cross*, and other
23 appropriate organizations, shall do the following:

24 (A) Develop a standardized curriculum for approved
25 training programs for certified nurse assistants and
26 criteria for approving training programs, that includes
27 program content for orientation, training, in-service
28 programs, and the examination for testing knowledge
29 and skills related to basic patient care services.

30 (B) ~~Develop an~~ *Review the current* examination for
31 approved training programs for certified nurse assistants
32 ~~that ensures to ensure~~ the accurate assessment of
33 whether a nurse assistant has obtained the required
34 knowledge and skills related to basic patient care services
35 and that shall be consistent with the standardized
36 curriculum developed pursuant to subparagraph (A).

37 (C) Develop a plan that identifies and encourages
38 career ladder opportunities for certified nurse assistants,
39 including the application of on-the-job post-certification
40 hours to educational credits.

(2) On or before January 1, 2004, the group established for purposes of paragraph (1) shall recommend, and the department shall adopt, regulation changes necessary to provide for the certification training program to be conducted by approved educational institutions.

(f) A skilled nursing or intermediate care facility shall determine the number of specific clinical hours within each module identified by the state department required to meet the requirements of subdivision (d), subject to subdivisions (b) and (c). The facility shall consider the specific hours recommended by the state department when adopting the certification training program required by this chapter. ~~This subdivision shall become inoperative on January 1, 2005.~~

(g) *(1) A skilled nursing facility or an intermediate care facility shall have the following three options for certified nurse assistant training:*

(A) Certified nurse assistant training may be conducted by an outside training agency or community college.

(B) A facility may contract with a community-based organization, such as the American Red Cross, or a collective bargaining agent, to conduct the certified nurse assistant training.

(C) A facility may conduct its own certified nurse assistant training, if it enters into a joint agreement with a community-based organization, such as the American Red Cross, or a collective bargaining agent.

(2) All training programs conducted pursuant to this subdivision shall be approved by the department.

(h) This article shall not apply to a program conducted by any church or denomination for the purpose of training the adherents of the church or denomination in the care of the sick in accordance with its religious tenets.

~~SEC. 12. Section 1417.1 of the Health and Safety Code is repealed.~~

~~SEC. 13. Section 1417.1 is added to the Health and Safety Code, to read:~~

~~1417.1. (a) It is the intent of the Legislature to establish all of the following:~~

~~(1) A citation system for the imposition of prompt and effective civil sanctions against long-term health care facilities in violation of the laws and regulations of this state and the federal laws and regulations applicable to nursing facilities, as defined in subdivision (k) of Section 1250 relating to patient care.~~

~~(2) An inspection and reporting system to ensure that long-term health care facilities are in compliance with state statutes and regulations pertaining to patient care.~~

~~(3) An effective enforcement system to deter the violation of, and ensure compliance with (A) state laws and regulations by long-term health care facilities and (B) federal laws and regulations applicable to nursing facilities, as defined by subdivision (k) of Section 1250.~~

~~(4) A provisional licensing and regulation mechanism to ensure that full-time licenses are issued only to those long-term health care facilities that meet state standards relating to patient care.~~

~~(b) Available remedies for a violation by a long-term health care facility of state or federal requirements shall include, but not be limited to, bans on admission, per diem civil monetary penalties, directed plans of correction, temporary managers, receivership, and license suspension and revocation. No violation may result in the issuance of both a citation and a per diem civil monetary penalty.~~

~~(c)~~

SEC. 10. Section 1417.15 is added to the Health and Safety Code, immediately after Section 1417.1, to read:

1417.15. (a) The director may issue a provisional license to the licensee of a long-term health care skilled nursing facility or an intermediate care facility if all of the following conditions are met:

(1) The facility is involuntarily terminated from the Medi-Cal or Medicare program.

(2) The facility has attempted to reapply for participation in the Medi-Cal or Medicare program.

(3) The facility has failed to regain "in compliance status" for purposes of participation in the Medi-Cal or Medicare program.

(4) The license has been suspended pursuant to Section 1294.

~~(d)~~

(b) If one or more of the following remedies is actually imposed for violation of state or federal requirements, the ~~long-term-care skilled nursing facility or intermediate care facility~~ shall post a notice of the imposed remedy or remedies, in a form specified by the department, on all doors providing ingress to or egress from the facility. *For purposes of this subdivision, a distinct part nursing facility shall only be required to post the notice on all main doors providing ingress to or egress from the distinct part, and not on all of the doors providing ingress to or egress from the hospital.*

(1) License suspension.

(2) Termination of certification for Medicare or Medi-Cal.

(3) Denial of payment by Medicare or Medi-Cal for all otherwise eligible residents.

(4) Denial of payment by Medicare or Medi-Cal for otherwise eligible incoming residents.

(5) Ban on admission of any type.

~~(e)~~

(c) A violation that results in the imposition of a remedy pursuant to subdivision ~~(e)~~ (d) shall be a class “B” violation, as defined in subdivision (e) of Section 1424.

~~(f)~~

(d) The department shall adopt regulations for the administration of this section.

~~SEC. 14. Section 1420 of the Health and Safety Code is amended to read:~~

~~1420. (a) For purposes of this section, “complaint” means any oral or written notice to the state department of an alleged violation of applicable requirements of state or federal law or of any alleged facts that might constitute such a violation.~~

~~(b) (1) Upon receipt of a written or oral complaint, the state department shall assign an inspector to make a preliminary review of the complaint and shall notify the~~

~~1 complainant within five working days of receipt of the
2 complaint of the name of the inspector. Unless the state
3 department determines that the complaint is willfully
4 intended to harass a licensee or is without any reasonable
5 basis, it shall make an onsite inspection or investigation
6 within 10 working days of the receipt of the complaint.
7 However, in any case in which there is a serious threat of
8 imminent danger of death or serious bodily harm, the
9 state department shall make an onsite inspection or
10 investigation within 24 hours of the receipt of the
11 complaint.~~

~~12 (2) Upon the request of either the complainant or the
13 state department, the complainant or his or her
14 representative, or both, may be allowed to accompany
15 the inspector to the site of the alleged violations during
16 his or her tour of the facility, unless the inspector
17 determines that the privacy of any patient would be
18 violated thereby. Prior to the commencement of the
19 onsite inspection or investigation, the complainant shall
20 be promptly informed of the state department's proposed
21 course of action and of his or her right to accompany the
22 inspector on the inspection or investigation of the facility.~~

~~23 (3) When conducting an onsite inspection or
24 investigation pursuant to this section, the state
25 department shall collect and evaluate all available
26 evidence and may issue a citation based upon, but not
27 limited to, all of the following:~~

~~28 (A) Observed conditions.~~

~~29 (B) Statements of witnesses.~~

~~30 (C) Facility records. At the time of the inspection, the
31 facility shall make copies of any records requested for
32 purposes of the investigation.~~

~~33 (c) Within 10 working days of completion of the
34 complaint investigation, the state department shall notify
35 the complainant in writing of the department's
36 determination as a result of the inspection or
37 investigation.~~

~~38 (d) Upon being notified of the state department's
39 determination as a result of the inspection or
40 investigation, a complainant who is dissatisfied with the~~

1 ~~state department's determination, regarding a matter~~
2 ~~which would pose a threat to the health, safety, security,~~
3 ~~welfare, or rights of a resident, shall be notified by the~~
4 ~~state department of the right to an informal conference,~~
5 ~~as set forth in this section. The complainant may, within~~
6 ~~five business days after receipt of the notice, notify the~~
7 ~~director in writing of his or her request for an informal~~
8 ~~conference. The informal conference shall be held with~~
9 ~~the designee of the director for the county in which the~~
10 ~~long-term health care facility which is the subject of the~~
11 ~~complaint is located. The long-term health care facility~~
12 ~~may participate as a party in this informal conference.~~
13 ~~The director's designee shall notify the complainant and~~
14 ~~licensee of his or her determination within 10 working~~
15 ~~days after the informal conference and shall apprise the~~
16 ~~complainant and licensee in writing of the appeal rights~~
17 ~~provided in subdivision (c).~~

18 ~~(e) If the complainant is dissatisfied with the~~
19 ~~determination of the director's designee in the county in~~
20 ~~which the facility is located, the complainant may, within~~
21 ~~15 days after receipt of this determination, notify in~~
22 ~~writing the Deputy Director of the Licensing and~~
23 ~~Certification Division of the state department, who shall~~
24 ~~assign the request to a representative of the Complainant~~
25 ~~Appeals Unit for review of the facts that led to both~~
26 ~~determinations. As a part of the Complainant Appeals~~
27 ~~Unit's independent investigation, and at the request of~~
28 ~~the complainant, the representative shall interview the~~
29 ~~complainant in the district office where the complaint~~
30 ~~was initially referred. Based upon this review, the Deputy~~
31 ~~Director of the Licensing and Certification Division of~~
32 ~~the state department shall make his or her own~~
33 ~~determination and notify the complainant and the facility~~
34 ~~within 30 days.~~

35 ~~(f) Any citation issued as a result of a conference or~~
36 ~~review provided for in subdivision (d) or (e) shall be~~
37 ~~issued and served upon the facility within three working~~
38 ~~days of the final determination, unless the licensee agrees~~
39 ~~in writing to an extension of this time. Service shall be~~
40 ~~effected either personally or by registered or certified~~

1 mail. A copy of the citation shall also be sent to each
2 complainant by certified or registered mail.

3 (g) A minicase conference shall be held with the
4 administrator or his or her representative upon leaving
5 the facility at the completion of the investigation to
6 inform him or her of the status of the investigation. The
7 department shall also state the items of noncompliance
8 and compliance found as a result of a complaint and those
9 items found to be in compliance, provided the disclosure
10 maintains the anonymity of the complainant. In any
11 matter in which there is a reasonable probability that the
12 identity of the complainant will not remain anonymous,
13 the department shall also state that it is unlawful to
14 discriminate or seek retaliation against the complainant.

15 SEC. 15. Section 1422 of the Health and Safety Code
16 is amended to read:

17 1422. (a) The Legislature finds and declares that it is
18 the public policy of this state to assure that long-term
19 health care facilities provide the highest level of care
20 possible. The Legislature further finds that inspections
21 are the most effective means of furthering this policy. It
22 is not the intent of the Legislature by the amendment of
23 subdivision (b) enacted by Chapter 1595 of the Statutes
24 of 1982 to reduce in any way the resources available to the
25 state department for inspections, but rather to provide
26 the state department with the greatest flexibility to
27 concentrate its resources where they can be most
28 effective.

29 (b) Without providing notice of these inspections, the
30 state department shall, in addition to any inspections
31 conducted pursuant to complaints filed pursuant to
32 Section 1419, conduct inspections annually, except with
33 regard to those facilities which have no class "AA," class
34 "A," or class "B" violations in the past 12 months. The
35 state department shall also conduct inspections as may be
36 necessary to assure the health, safety, and security of
37 patients in long-term health care facilities. Every facility
38 shall be inspected at least once every two years.

39 The state department shall submit to the federal
40 Department of Health and Human Services on or before

1 July 1, 1985, for review and approval, a request to
2 implement a three-year pilot program designed to lessen
3 the predictability of the long-term health care facility
4 inspection process. Two components of the pilot program
5 shall be (1) the elimination of the present practice of
6 entering into a one-year certification agreement, and (2)
7 the conduct of segmented inspections of a sample of
8 facilities with poor inspection records, as defined by the
9 state department. At the conclusion of the pilot project,
10 an analysis of both components shall be conducted by the
11 state department to determine effectiveness in reducing
12 inspection predictability and the respective cost benefits.
13 Implementation of this pilot project is contingent upon
14 federal approval. The state department shall report
15 annually to the Legislature on progress of the pilot project
16 with a final report at the end of the third year.

17 (e) Except as otherwise provided in subdivision (b),
18 the state department shall conduct unannounced direct
19 patient care inspections at least annually to inspect
20 physician and surgeon services, nursing services,
21 pharmacy services, dietary services, and activity
22 programs of all the long-term health care facilities.
23 Facilities evidencing repeated serious problems in
24 complying with this chapter or a history of poor
25 performance, or both, shall be subject to periodic
26 unannounced direct patient care inspections during the
27 inspection year. The direct patient care inspections shall
28 assist the state department in the prioritization of its
29 efforts to correct facility deficiencies.

30 (d) (1) All long-term health care facilities shall report
31 to the department, and the State Board of Nursing Home
32 Administrators of the State of California or the Board of
33 Registered Nurses, as applicable, any changes in the
34 nursing home administrator or the director of nursing
35 services within 10 calendar days of the changes.

36 (2) The State Board of Nursing Home Administrators
37 of the State of California shall maintain an employment
38 record for each long-term care nursing home
39 administrator. The employment record shall indicate the

~~1 dates of employment at each facility. The board shall post
2 these employment records on the Internet.~~

~~3 (3) The Board of Registered Nurses shall maintain an
4 employment record for each director of nursing services
5 at a long-term health care facility. The employment
6 record shall indicate the dates of employment at each
7 facility. The board shall post these employment records
8 on the Internet.~~

~~9 (e) Within 90 days after the receipt of notice of a
10 change in the nursing home administrator or the director
11 of nursing services, the state department may conduct an
12 abbreviated inspection of the long-term health care
13 facilities.~~

~~14 (f) If a change in a nursing home administrator occurs
15 and the Board of Nursing Home Administrators notifies
16 the state department that the new administrator is on
17 probation or has had his or her license suspended within
18 the previous three years, the state department shall
19 conduct an abbreviated survey of the long-term health
20 care facility employing that administrator within 90 days
21 of notification.~~

~~22 SEC. 16. Section 1424 of the Health and Safety Code
23 is amended to read:~~

~~24 1424. Citations issued pursuant to this chapter shall be
25 classified according to the nature of the violation and shall
26 indicate the classification on the face thereof.~~

~~27 (a) In determining the amount of the civil penalty, all
28 relevant facts shall be considered, including, but not
29 limited to, the following:~~

~~30 (1) The probability and severity of the risk that the
31 violation presents to the patient's or resident's mental and
32 physical condition.~~

~~33 (2) The patient's or resident's medical condition.~~

~~34 (3) The patient's or resident's mental condition and
35 his or her history of mental disability or disorder.~~

~~36 (4) The good faith efforts exercised by the facility to
37 prevent the violation from occurring.~~

~~38 (5) The licensee's history of compliance with
39 regulations.~~

~~(b) Relevant facts considered by the department in determining the amount of the civil penalty shall be documented by the department on an attachment to the citation and available in the public record. This requirement shall not preclude the department or a facility from introducing facts not listed on the citation to support or challenge the amount of the civil penalty in any proceeding set forth in Section 1428.~~

~~(c) Class “AA” violations are violations that meet the criteria for a class “A” violation and that the state department determines to have been a direct proximate cause of death of a patient or resident of a long-term health care facility. A class “AA” citation is subject to a civil penalty in the amount of not less than twenty-five thousand dollars (\$25,000) and not exceeding one hundred thousand dollars (\$100,000) for each citation. In any action to enforce a citation issued under this subdivision, the state department shall prove all of the following:~~

~~(1) The violation was a direct proximate cause of death of a patient or resident.~~

~~(2) The death resulted from an occurrence of a nature that the regulation was designed to prevent.~~

~~(3) The patient or resident suffering the death was among the class of persons for whose protection the regulation was adopted.~~

~~If the state department meets this burden of proof, the licensee shall have the burden of proving that the licensee did what might reasonably be expected of a long-term health care facility licensee, acting under similar circumstances, to comply with the regulation. If the licensee sustains this burden, then the citation shall be dismissed.~~

~~For each class “AA” citation within a 12-month period that has become final, the state department shall consider the suspension or revocation of the facility’s license in accordance with Section 1294. For a third or subsequent class “AA” citation in a facility within that 12-month period that has been sustained following a citation review conference, the state department shall commence action~~

1 to suspend or revoke the facility's license in accordance
2 with Section 1294.

3 (d) Class "A" violations are violations which the state
4 department determines present either (1) imminent
5 danger that death or serious harm to the patients or
6 residents of the long-term health care facility would
7 result therefrom, or (2) substantial probability that death
8 or serious physical harm to patients or residents of the
9 long-term health care facility would result therefrom. A
10 physical condition or one or more practices, means,
11 methods, or operations in use in a long-term health care
12 facility may constitute a class "A" violation. The condition
13 or practice constituting a class "A" violation shall be
14 abated or eliminated immediately, unless a fixed period
15 of time, as determined by the state department, is
16 required for correction. A class "A" citation is subject to
17 a civil penalty in an amount not less than five thousand
18 dollars (\$5,000) and not exceeding twenty-five thousand
19 dollars (\$25,000) for each and every citation.

20 If the state department establishes that a violation
21 occurred, the licensee shall have the burden of proving
22 that the licensee did what might reasonably be expected
23 of a long-term health care facility licensee, acting under
24 similar circumstances, to comply with the regulation. If
25 the licensee sustains this burden, then the citation shall be
26 dismissed.

27 (e) Class "B" violations are violations that the state
28 department determines have a direct or immediate
29 relationship to the health, safety, or security of long-term
30 health care facility patients or residents, other than class
31 "AA" or "A" violations. Unless otherwise determined by
32 the state department to be a class "A" violation pursuant
33 to this chapter and rules and regulations adopted
34 pursuant thereto, any violation of a patient's rights as set
35 forth in Sections 72527 and 73523 of Title 22 of the
36 California Administrative Code, that is determined by
37 the state department to cause or under circumstances
38 likely to cause significant humiliation, indignity, anxiety,
39 or other emotional trauma to a patient is a class "B"
40 violation. A class "B" citation is subject to a civil penalty

1 in an amount not less than one thousand dollars (\$1,000)
2 and not exceeding five thousand dollars (\$5,000) for each
3 and every citation. A class “B” citation shall specify the
4 time within which the violation is required to be
5 corrected. If the state department establishes that a
6 violation occurred, the licensee shall have the burden of
7 proving that the licensee did what might reasonably be
8 expected of a long-term health care facility licensee,
9 acting under similar circumstances, to comply with the
10 regulation. If the licensee sustains this burden, then the
11 citation shall be dismissed.

12 In the event of any citation under this paragraph, if the
13 state department establishes that a violation occurred,
14 the licensee shall have the burden of proving that the
15 licensee did what might reasonably be expected of a
16 long-term health care facility licensee, acting under
17 similar circumstances, to comply with the regulation. If
18 the licensee sustains this burden, then the citation shall be
19 dismissed.

20 (f) (1) Any willful material falsification or willful
21 material omission in the health record of a patient of a
22 long-term health care facility is a violation.

23 (2) “Willful material falsification,” as used in this
24 section, means any entry in the patient health care record
25 pertaining to the administration of medication, or
26 treatments ordered for the patient, or pertaining to
27 services for the prevention or treatment of decubitus
28 ulcers or contractures, or pertaining to tests and
29 measurements of vital signs, or notations of input and
30 output of fluids, that was made with the knowledge that
31 the records falsely reflect the condition of the resident or
32 the care or services provided.

33 (3) “Willful material omission,” as used in this section,
34 means the willful failure to record any untoward event
35 that has affected the health, safety, or security of the
36 specific patient, and that was omitted with the knowledge
37 that the records falsely reflect the condition of the
38 resident or the care or services provided.

~~(g) A violation of subdivision (f) may result in a civil penalty not to exceed ten thousand dollars (\$10,000), as specified in paragraphs (1) to (3), inclusive.~~

~~(1) The willful material falsification or willful material omission is subject to a civil penalty of not less than two thousand five hundred dollars (\$2,500) or more than ten thousand dollars (\$10,000) in instances where the health care record is relied upon by a health care professional to the detriment of a patient by affecting the administration of medications or treatments, the issuance of orders, or the development of plans of care. In all other cases, violations of this subdivision are subject to a civil penalty not exceeding two thousand five hundred dollars (\$2,500).~~

~~(2) Where the penalty assessed is five thousand dollars (\$5,000) or less, the violation shall be issued and enforced, except as provided in this subdivision, in the same manner as a class “B” violation, and shall include the right of appeal as specified in Section 1428. Where the assessed penalty is in excess of five thousand dollars (\$5,000), the violation shall be issued and enforced, except as provided in this subdivision, in the same manner as a class “A” violation, and shall include the right of appeal as specified in Section 1428.~~

~~Nothing in this section shall be construed as a change in previous law enacted by Chapter 11 of the Statutes of 1985 relative to this paragraph, but merely as a clarification of existing law.~~

~~(3) Nothing in this subdivision shall preclude the state department from issuing a class “A” or class “B” citation for any violation that meets the requirements for that citation, regardless of whether the violation also constitutes a violation of this subdivision. However, no single act, omission, or occurrence may be cited both as a class “A” or class “B” violation and as a violation of this subdivision.~~

~~(h) The director shall prescribe procedures for the issuance of a notice of violation with respect to violations having only a minimal relationship to patient safety or health.~~

~~(i) Nothing in this section is intended to change existing statutory or regulatory requirements governing the ability of a licensee to contest a citation pursuant to Section 1428.~~

~~(j) The department shall ensure that district office activities performed under Sections 1419 to 1424, inclusive, are consistent with the requirements of these sections and all applicable laws and regulations. To ensure the integrity of these activities, the department shall establish a statewide process for the collection of postsurvey evaluations from affected facilities and utilize this information to enhance surveyor competence through additional training, evaluation, and supervision.~~

~~SEC. 17. Section 1428 of the Health and Safety Code is amended to read:~~

~~1428. (a) If a licensee desires to contest a citation or the proposed assessment of a civil penalty, the licensee shall choose from either of the following alternatives:~~

~~(1) First post as security, in cash or cash equivalent, an amount equal to the civil penalty indicated. After posting security, the licensee shall use the processes described in subdivision (c). If upon the completion of the appeals process, it is determined that the civil penalty should be dismissed, waived, or reduced, the balance of the security, after deduction of any applicable penalties, shall remit back to the licensee. Any amount of the security posted that is returned shall be returned with interest accrued at a rate equal to the interest accrued in the Pooled Money Investment Account as provided under Section 926.19 of the Government Code.~~

~~(2) First use the processes described in subdivision (c). If upon completion of the process, the citation and civil penalty is upheld, the licensee shall pay the civil penalty with interest at the adjusted annual rate established by the Franchise Tax Board pursuant to Section 19521.~~

~~(b) As a result of a citation review conference conducted pursuant to subdivision (c), a citation or the proposed assessment of a civil penalty may be affirmed, increased, decreased, or dismissed by the director or the~~

1 director's designee. If the director's designee affirms,
2 increases, decreases, or dismisses the citation or proposed
3 assessment of a civil penalty, he or she shall state with
4 particularity in writing his or her reasons for that action,
5 and shall immediately transmit a copy thereof to each
6 party to the original complaint. If the licensee desires to
7 contest a decision made after the citation review
8 conference, the licensee shall inform the director in
9 writing within 15 business days after he or she receives
10 the decision by the director's designee.

11 (e) (1) If a licensee notifies the director that he or she
12 intends to contest a class "AA" or a class "A" citation, the
13 licensee may first, within 15 business days after service of
14 the citation, notify the director in writing of his or her
15 request for a citation review conference. The licensee
16 shall inform the director in writing, within 15 business
17 days of the service of the citation or the receipt of the
18 decision of the director's designee after the citation
19 review conference, of the licensee's intent to adjudicate
20 the validity of the citation in the municipal or superior
21 court in the county in which the long-term health care
22 facility is located. In order to perfect a judicial appeal of
23 a contested citation, a licensee shall file a civil action in
24 the municipal or superior court in the county in which the
25 long-term health care facility is located. The action shall
26 be filed no later than 90 calendar days after a licensee
27 notifies the director that he or she intends to contest the
28 citation, or no later than 90 days after the receipt of the
29 decision by the director's designee after the citation
30 review conference, and served not later than 90 days after
31 filing. Notwithstanding any other provision of law, a
32 licensee prosecuting a judicial appeal shall file and serve
33 an at-issue memorandum pursuant to Rule 209 of the
34 California Rules of Court within six months after the state
35 department files its answer in the appeal.
36 Notwithstanding subdivision (d), the court shall dismiss
37 the appeal upon motion of the state department if the
38 at-issue memorandum is not filed by the facility within
39 the period specified.

~~(2) If a licensee desires to contest a class “B” citation, the licensee may request, within 15 business days after service of the citation, a citation review conference, by writing the director or the director’s designee of the licensee’s intent to appeal the citation through the citation review conference. If the licensee wishes to appeal the citation which has been upheld in a citation review conference, the licensee shall, within 15 working days from the date the citation review conference decision was rendered, notify the director or the director’s designee that he or she wishes to appeal the decision through the procedures set forth in Section 100171 or elects to submit the matter to binding arbitration in accordance with subdivision (d). The administrative law judge may affirm, modify, or dismiss the citation or the proposed assessment of a civil penalty. The licensee may choose to have his or her appeal heard by the administrative law judge or submit the matter to binding arbitration without having first appealed the decision to a citation review conference by notifying the director in writing within 15 business days of the service of the citation.~~

~~(d) If a licensee is dissatisfied with the decision of the administrative law judge, the licensee may, in lieu of seeking judicial review of the decision as provided in Section 1094.5 of the Code of Civil Procedure, elect to submit the matter to binding arbitration by filing, within 60 days of its receipt of the decision, a request for arbitration with the American Arbitration Association. The parties shall agree upon an arbitrator designated from the American Arbitration Association in accordance with the association’s established rules and procedures. The arbitration hearing shall be set within 45 days of the election to arbitrate, but in no event less than 28 days from the date of selection of an arbitrator. The arbitration hearing may be continued up to 15 additional days if necessary at the arbitrator’s discretion. Except as otherwise specifically provided in this subdivision, the arbitration hearing shall be conducted in accordance with the American Arbitration Association’s established~~

1 rules and procedures. The arbitrator shall determine
2 whether the licensee violated the regulation or
3 regulations cited by the department, and whether the
4 citation meets the criteria established in Sections 1423
5 and 1424. If the arbitrator determines that the licensee
6 has violated the regulation or regulations cited by the
7 department, and that the class of the citation should be
8 upheld, the proposed assessment of a civil penalty shall be
9 affirmed, subject to the limitations established in Section
10 1424. The licensee and the department shall each bear its
11 respective portion of the cost of arbitration. A resident, or
12 his or her designated representative, or both, entitled to
13 participate in the citation review conference pursuant to
14 subdivision (f), may make an oral or written statement
15 regarding the citation, at any arbitration hearing to which
16 the matter has been submitted after the citation review
17 conference.

18 (e) If an appeal is prosecuted under this section,
19 including an appeal taken in accordance with Section
20 100171, the state department shall have the burden of
21 establishing by a preponderance of the evidence that (1)
22 the alleged violation did occur, (2) the alleged violation
23 met the criteria for the class of citation alleged, and (3)
24 the assessed penalty was appropriate. The state
25 department shall also have the burden of establishing by
26 a preponderance of the evidence that the assessment of
27 a civil penalty should be upheld. If a licensee fails to notify
28 the director in writing that he or she intends to contest
29 the citation, or the proposed assessment of a civil penalty
30 therefor, or the decision made by the director's designee,
31 after a citation review conference, within the time
32 specified in this section, the decision by the director's
33 designee after a citation review conference shall be
34 deemed a final order of the state department and shall not
35 be subject to further administrative review, except that
36 the licensee may seek judicial relief from the time limits
37 specified in this section. If a licensee appeals a contested
38 citation or the assessment of a civil penalty, no civil
39 penalty shall be due and payable unless and until the
40 appeal is terminated in favor of the state department.

1 ~~When the appeal is terminated in favor of the licensee,~~
2 ~~the department shall return the amount posted, minus~~
3 ~~any penalties due, within 10 days of written notice of the~~
4 ~~decision.~~

5 ~~(f) The director or the director's designee shall~~
6 ~~establish an independent unit of trained citation review~~
7 ~~conference hearing officers within the state department~~
8 ~~to conduct citation review conferences. Citation review~~
9 ~~conference hearing officers shall be directly responsible~~
10 ~~to the deputy director for licensing and certification, and~~
11 ~~shall not be concurrently employed as supervisors,~~
12 ~~district administrators, or regional administrators with~~
13 ~~the licensing and certification division. Specific training~~
14 ~~shall be provided to members of this unit on conducting~~
15 ~~an informal conference, with emphasis on the regulatory~~
16 ~~and legal aspects of long-term health care.~~

17 ~~Where the state department issues a citation as a result~~
18 ~~of a complaint or regular inspection visit, and a resident~~
19 ~~or residents are specifically identified in a citation by~~
20 ~~name as being specifically affected by the violation, then~~
21 ~~the following persons may attend the citation review~~
22 ~~conference:~~

23 ~~(1) The complainant and his or her designated~~
24 ~~representative.~~

25 ~~(2) A personal health care provider, designated by the~~
26 ~~resident.~~

27 ~~(3) A personal attorney.~~

28 ~~(4) Any person representing the Office of the State~~
29 ~~Long Term Care Ombudsman, as defined in subdivision~~
30 ~~(e) of Section 9701 of the Welfare and Institutions Code.~~

31 ~~Where the state department determines that residents~~
32 ~~in the facility were threatened by the cited violation but~~
33 ~~does not name specific residents, any person representing~~
34 ~~the Office of the State Long-Term Care Ombudsman, as~~
35 ~~defined in subdivision (e) of Section 9701 of the Welfare~~
36 ~~and Institutions Code, and a representative of the~~
37 ~~residents or family council at the facility may participate~~
38 ~~to represent all residents. In this case, these~~
39 ~~representatives shall be the sole participants for the~~
40 ~~residents in the conference. The residents or family~~

1 council shall designate which representative will
2 participate.

3 The complainant, affected resident, and their
4 designated representatives shall be notified by the state
5 department of the conference and their right to
6 participate. The director's designee shall notify the
7 complainant or his or her designated representative and
8 the affected resident or his or her designated
9 representative, of his or her determination based on the
10 citation review conference.

11 (g) In assessing the civil penalty for a violation, all
12 relevant facts shall be considered, including, but not
13 limited to, all of the following:

14 (1) The probability and severity of the risk which the
15 violation presents to the patient's or resident's mental and
16 physical condition.

17 (2) The patient's or resident's medical condition.

18 (3) The patient's or resident's mental condition and
19 his or her history of mental disability.

20 (4) The good faith efforts exercised by the facility to
21 prevent the violation from occurring.

22 (5) The licensee's history of compliance with
23 regulations.

24 (h) Except as otherwise provided in this subdivision,
25 an assessment of civil penalties for a class "A" or class "B"
26 violation shall be trebled and collected for a second and
27 subsequent violation for which a citation of the same class
28 was issued within any 12-month period. Trebling shall
29 occur only if the first citation issued within the 12-month
30 period was issued in the same class, a civil penalty was
31 assessed, and a plan of correction was submitted for the
32 previous same-class violation occurring within the period,
33 without regard to whether the action to enforce the
34 previous citation has become final. However, the
35 increment to the civil penalty required by this
36 subdivision shall not be due and payable unless and until
37 the previous action has terminated in favor of the state
38 department.

39 If the class "B" citation is issued for a patient's rights
40 violation, as defined in subdivision (e) of Section 1424, it

~~shall not be trebled unless the state department determines the violation has a direct or immediate relationship to the health, safety, security, or welfare of long-term health care facility residents.~~

~~(i) The director shall prescribe procedures for the issuance of a notice of violation with respect to violations having only a minimal relationship to safety or health.~~

~~(j) Actions brought under this chapter shall be set for trial at the earliest possible date and shall take precedence on the court calendar over all other cases except matters to which equal or superior precedence is specifically granted by law. Times for responsive pleading and for hearing the proceeding shall be set by the judge of the court with the object of securing a decision as to subject matters at the earliest possible time.~~

~~(k) If the citation is dismissed, the state department shall take action immediately to ensure that the public records reflect in a prominent manner that the citation was dismissed.~~

~~(l) Penalties paid on violations under this chapter shall be applied against the state department's accounts to offset any costs incurred by the state pursuant to this chapter. If a facility does not comply with this requirement, the state department shall withhold any payment under the Medi-Cal program until the debt is satisfied.~~

~~(m) The amendments made to subdivisions (a) and (e) of this section by Chapter 84 of the Statutes of 1988, to extend the number of days allowed for the provision of notification to the director, do not affect the right, that is also contained in those amendments, to request judicial relief from these time limits.~~

~~SEC. 18. Section 1430 of the Health and Safety Code is amended to read:~~

~~1430. (a) Any licensee who commits a class "AA," "A," or "B" violation may be enjoined from permitting the violation to continue or may be sued for civil damages and for reasonable costs and attorney fees within a court of competent jurisdiction. These actions for injunction or civil damages, or both, may be prosecuted by the~~

~~1 Attorney General in the name of the people of the State
2 of California upon his or her own complaint or upon the
3 complaint of any board, officer, person, corporation or
4 association, or by any person acting for the interests of
5 itself, its members or the general public. The amount of
6 civil damages which may be recovered in an action
7 brought pursuant to this section shall not exceed the
8 maximum amount of civil penalties which could be
9 assessed on account of the violation or violations.~~

~~10 (b) A resident or patient of a skilled nursing facility, as
11 defined in subdivision (c) of Section 1250, or
12 intermediate care facilities, as defined in subdivision (d)
13 of Section 1250, may bring a civil action against the
14 licensee of a facility who violates any rights of the resident
15 or patient as set forth under state and federal law. The suit
16 shall be brought in a court of competent jurisdiction. The
17 licensee shall be liable for the acts of the licensee's
18 employees. The licensee shall be liable for up to
19 twenty-five thousand dollars (\$25,000) in damages, and
20 for reasonable costs and attorney fees, and may be
21 enjoined from permitting the violation to continue. An
22 agreement by a resident or patient of a skilled nursing
23 facility or intermediate care facility to waive his or her
24 rights to sue pursuant to this subdivision shall be void as
25 contrary to public policy.~~

~~26 (c) The remedies specified in this section shall be in
27 addition to any other remedy or remedies provided by
28 law.~~

~~29 SEC. 19.—~~

~~30 SEC. 11. Section 1417.3 of the Health and Safety Code
31 is amended to read:~~

~~32 1417.3. (a) The department shall promote quality in
33 long-term health care facility services through specific
34 activities that include, but are not limited to, all of the
35 following:~~

~~36 (a)—~~

~~37 (1) Research and evaluation of innovative facility
38 resident care models.~~

~~39 (b)—~~

1 (2) Provision of statewide training on effective facility
2 practices.

3 ~~(e)~~

4 (3) Response to facility requests for technical
5 assistance regarding licensing and certification
6 requirements, compliance with federal and state
7 standards, and related operational issues.

8 *(b) The department shall integrate additional quality*
9 *assurance activities into the department's ongoing survey*
10 *and enforcement process. The department shall address*
11 *the following specific quality assurance activities:*

12 *(1) The development of outcome measurements to*
13 *assess quality of care based on resident care rather than*
14 *paper and process compliance with federal and state*
15 *requirements.*

16 *(2) The development and utilization of customer*
17 *satisfaction surveys to evaluate consumer satisfaction*
18 *with facility care and provide useful consumer*
19 *information.*

20 *(3) The development and utilization of an effective*
21 *targeted enforcement process that identifies true quality*
22 *problems and better focuses department enforcement*
23 *activities on long-term health care facilities that are poor*
24 *performers.*

25 SEC. 12. Section 1417.4 is added to the Health and
26 Safety Code, to read:

27 1417.4. (a) The department shall establish, as
28 specified in this section, a pilot program to develop, and
29 to test the viability of, a process designed to be an
30 alternative to the long-term health care facility
31 enforcement system in effect prior to January 1, 2000.

32 (b) The pilot program shall be developed in
33 consultation with consumers, providers, academic
34 experts, and other interested parties.

35 (c) The pilot program shall do all of the following:

36 (1) Define specific facilities that shall participate in
37 the pilot program.

38 (2) Conduct identified portions of the state and
39 federal survey in facilities comprising the pilot program
40 on a constant basis throughout the year.

1 (d) Facilities participating in the pilot program shall
2 continue to be subject to normal survey processes
3 required under state and federal law.

4 SEC. 13. Section 1420.05 is added to the Health and
5 Safety Code, to read:

6 1420.05. (a) Notwithstanding subdivision (a) of
7 Section 1420, the following shall apply to a complaint with
8 regard to a skilled nursing facility and an intermediate
9 care facility as defined in subdivision (c).

10 (1) (A) Upon receipt of a written or oral complaint
11 with regard to a facility, the state department shall assign
12 an inspector to make a preliminary review of the
13 complaint and shall notify the complainant within five
14 working days of receipt of the complaint of the name of
15 the inspector. Unless the state department determines
16 that the complaint is willfully intended to harass a
17 licensee or is without any reasonable basis, it shall make
18 an onsite inspection or investigation within 10 working
19 days of the receipt of the complaint. In any case in which
20 there is serious threat of imminent danger of death or
21 serious bodily harm, the state department shall make an
22 onsite inspection or investigation within 24 hours of the
23 receipt of the complaint.

24 (B) Upon the request of either the complainant or the
25 state department, the complainant or his or her
26 representative, or both, may be allowed to accompany
27 the inspector to the site of the alleged violations during
28 his or her tour of the facility, unless the inspector
29 determines that the privacy of any patient would be
30 violated thereby. Prior to the commencement of the
31 onsite inspection or investigation, the complainant shall
32 be promptly informed of the state department's proposed
33 course of action and of his or her right to accompany the
34 inspector on the inspection or investigation of the facility.

35 (C) When conducting an onsite inspection or
36 investigation of a facility pursuant to this section, the state
37 department shall collect and evaluate all available
38 evidence and may issue a citation based upon, but not
39 limited to, all of the following:

40 (i) Observed conditions.

(ii) *State of witnesses.*

(iii) *Facility records.* At the time of the inspection, the facility shall make copies of any records requested for purposes of the investigation.

(2) Within 10 working days of completion of the complaint investigation, the state department shall notify the complainant and the facility in writing of the department's determination as a result of the inspection or investigation.

(b) "Complaint" for purposes of this section shall mean any oral or written notice to the state department of an alleged violation of applicable requirements of the state or federal law or of any alleged facts that might constitute such a violation.

(c) A complainant under this section shall be entitled to an informal conference and review process as specified in subdivisions (b), (c), and (d) of Section 1420. However, a copy of any citation issued as a result of a conference or review under these provisions shall be sent to each complainant by certified or registered mail.

(d) A miniexit conference as specified in Section 1420 shall be held. The department shall also state the items of noncompliance and compliance found as a result of a complaint and those items found to be in compliance, provided the disclosure maintains the anonymity of the complainant. However, in any matter in which there is reasonable probability that the identity of the complainant will not remain anonymous, the department shall state that it is unlawful to discriminate or seek retaliation against the complainant.

(e) For purposes of this section, the following definitions shall apply:

(1) "Skilled nursing facility" has the same meaning as specified in subdivision (c) of Section 1250, except it shall not include a facility operating a special treatment program.

(2) "Intermediate care facility" shall not include an intermediate care facility/developmentally disabled habilitative or intermediate care facility/developmentally disabled-nursing.

1 *SEC. 14. Section 1422 of the Health and Safety Code*
2 *is amended to read:*

3 1422. (a) The Legislature finds and declares that it is
4 the public policy of this state to assure that long-term
5 health care facilities provide the highest level of care
6 possible. The Legislature further finds that inspections
7 are the most effective means of furthering this policy. It
8 is not the intent of the Legislature by the amendment of
9 subdivision (b) enacted by Chapter 1595 of the Statutes
10 of 1982 to reduce in any way the resources available to the
11 state department for inspections, but rather to provide
12 the state department with the greatest flexibility to
13 concentrate its resources where they can be most
14 effective.

15 (b) (1) Without providing notice of these inspections,
16 the state department shall, in addition to any inspections
17 conducted pursuant to complaints filed pursuant to
18 Section 1419, conduct inspections annually, except with
19 regard to those facilities which have no class ~~“AA”~~, “AA,”
20 class ~~“A”~~, “A,” or class “B” violations in the past ~~twelve~~
21 12 months. The state department shall also conduct
22 inspections as may be necessary to assure the health,
23 safety, and security of patients in long-term health care
24 facilities. Every facility shall be inspected at least once
25 every two years.

26 ~~The~~
27 (2) *The department shall vary the cycle in which*
28 *inspections of skilled nursing facilities and intermediate*
29 *care facilities are conducted to reduce the predictability*
30 *of the inspections.*

31 (3) *The state department shall submit to the federal*
32 *Department of Health and Human Services on or before*
33 *July 1, 1985, for review and approval, a request to*
34 *implement a three-year pilot program designed to lessen*
35 *the predictability of the long-term health care facility*
36 *inspection process. Two components of the pilot program*
37 *shall be (1) (A) the elimination of the present practice of*
38 *entering into a one-year certification agreement, and (2)*
39 *(B) the conduct of segmented inspections of a sample of*
40 *facilities with poor inspection records, as defined by the*

1 state department. At the conclusion of the pilot project,
2 an analysis of both components shall be conducted by the
3 state department to determine effectiveness in reducing
4 inspection predictability and the respective cost benefits.
5 Implementation of this pilot project is contingent upon
6 federal approval. The state department shall report
7 annually to the Legislature on progress of the pilot project
8 with a final report at the end of the third year.

9 (c) Except as otherwise provided in subdivision (b),
10 the state department shall conduct unannounced direct
11 patient care inspections at least annually to inspect
12 physician and surgeon services, nursing services,
13 pharmacy services, dietary services, and activity
14 programs of all the long-term health care facilities.
15 Facilities evidencing repeated serious problems in
16 complying with this chapter or a history of poor
17 performance, or both, shall be subject to periodic
18 unannounced direct patient care inspections during the
19 inspection year. The direct patient care inspections shall
20 assist the state department in the prioritization of its
21 efforts to correct facility deficiencies.

22 (d) All long-term health care facilities shall report to
23 the state department any changes in the nursing home
24 administrator or the director of nursing services within 10
25 calendar days of the changes.

26 (e) Within 90 days after the receipt of notice of a
27 change in the nursing home administrator or the director
28 of nursing services, the state department may conduct an
29 abbreviated inspection of the long-term health care
30 facilities.

31 (f) If a change in a nursing home administrator occurs
32 and the Board of Nursing Home Administrators notifies
33 the state department that the new administrator is on
34 probation or has had his or her license suspended within
35 the previous three years, the state department shall
36 conduct an abbreviated survey of the long-term health
37 care facility employing that administrator within 90 days
38 of notification.

39 *SEC. 15. Section 1424 of the Health and Safety Code*
40 *is amended to read:*

1 1424. Citations issued pursuant to this chapter shall be
2 classified according to the nature of the violation and shall
3 indicate the classification on the face thereof.

4 (a) In determining the amount of the civil penalty, all
5 relevant facts shall be considered, including, but not
6 limited to, the following:

7 (1) The probability and severity of the risk that the
8 violation presents to the patient's or resident's mental and
9 physical condition.

10 (2) The patient's or resident's medical condition.

11 (3) The patient's or resident's mental condition and
12 his or her history of mental disability or disorder.

13 (4) The good faith efforts exercised by the facility to
14 prevent the violation from occurring.

15 (5) The licensee's history of compliance with
16 regulations.

17 (b) Relevant facts considered by the department in
18 determining the amount of the civil penalty shall be
19 documented by the department on an attachment to the
20 citation and available in the public record. This
21 requirement shall not preclude the department or a
22 facility from introducing facts not listed on the citation to
23 support or challenge the amount of the civil penalty in
24 any proceeding set forth in Section 1428.

25 (c) Class "AA" violations are violations that meet the
26 criteria for a class "A" violation and that the state
27 department determines to have been a direct proximate
28 cause of death of a patient or resident of a long-term
29 health care facility. A class "AA" citation is subject to a
30 civil penalty in the amount of not less than five thousand
31 dollars (\$5,000) and not exceeding twenty-five thousand
32 dollars (\$25,000) for each citation. In any action to
33 enforce a citation issued under this subdivision, the state
34 department shall prove all of the following:

35 (1) The violation was a direct proximate cause of death
36 of a patient or resident.

37 (2) The death resulted from an occurrence of a nature
38 that the regulation was designed to prevent.

1 (3) The patient or resident suffering the death was
2 among the class of persons for whose protection the
3 regulation was adopted.

4 If the state department meets this burden of proof, the
5 licensee shall have the burden of proving that the licensee
6 did what might reasonably be expected of a long-term
7 health care facility licensee, acting under similar
8 circumstances, to comply with the regulation. If the
9 licensee sustains this burden, then the citation shall be
10 dismissed.

11 For each class “AA” citation within a 12-month period
12 that has become final, the state department shall consider
13 the suspension or revocation of the facility’s license in
14 accordance with Section 1294. For a third or subsequent
15 class “AA” citation in a facility within that 12-month
16 period that has been sustained following a citation review
17 conference, the state department shall commence action
18 to suspend or revoke the facility’s license in accordance
19 with Section 1294.

20 (d) Class “A” violations are violations which the state
21 department determines present either (1) imminent
22 danger that death or serious harm to the patients or
23 residents of the long-term health care facility would
24 result therefrom, or (2) substantial probability that death
25 or serious physical harm to patients or residents of the
26 long-term health care facility would result therefrom. A
27 physical condition or one or more practices, means,
28 methods, or operations in use in a long-term health care
29 facility may constitute a class “A” violation. The condition
30 or practice constituting a class “A” violation shall be
31 abated or eliminated immediately, unless a fixed period
32 of time, as determined by the state department, is
33 required for correction. A class “A” citation is subject to
34 a civil penalty in an amount not less than one thousand
35 dollars (\$1,000) and not exceeding ten thousand dollars
36 (\$10,000) for each and every citation.

37 If the state department establishes that a violation
38 occurred, the licensee shall have the burden of proving
39 that the licensee did what might reasonably be expected
40 of a long-term health care facility licensee, acting under

1 similar circumstances, to comply with the regulation. If
2 the licensee sustains this burden, then the citation shall be
3 dismissed.

4 (e) Class “B” violations are violations that the state
5 department determines have a direct or immediate
6 relationship to the health, safety, or security of long-term
7 health care facility patients or residents, other than class
8 “AA” or “A” violations. Unless otherwise determined by
9 the state department to be a class “A” violation pursuant
10 to this chapter and rules and regulations adopted
11 pursuant thereto, any violation of a patient’s rights as set
12 forth in Sections 72527 and 73523 of Title 22 of the
13 California Administrative Code, that is determined by
14 the state department to cause or under circumstances
15 likely to cause significant humiliation, indignity, anxiety,
16 or other emotional trauma to a patient is a class “B”
17 violation. A class “B” citation is subject to a civil penalty
18 in an amount not less than one hundred dollars (\$100) and
19 not exceeding one thousand dollars (\$1,000) for each and
20 every citation. A class “B” citation shall specify the time
21 within which the violation is required to be corrected. If
22 the state department establishes that a violation
23 occurred, the licensee shall have the burden of proving
24 that the licensee did what might reasonably be expected
25 of a long-term health care facility licensee, acting under
26 similar circumstances, to comply with the regulation. If
27 the licensee sustains this burden, then the citation shall be
28 dismissed.

29 In the event of any citation under this paragraph, if the
30 state department establishes that a violation occurred,
31 the licensee shall have the burden of proving that the
32 licensee did what might reasonably be expected of a
33 long-term health care facility licensee, acting under
34 similar circumstances, to comply with the regulation. If
35 the licensee sustains this burden, then the citation shall be
36 dismissed.

37 (f) (1) Any willful material falsification or willful
38 material omission in the health record of a patient of a
39 long-term health care facility is a violation.



1 (2) “Willful material falsification,” as used in this
2 section, means any entry in the patient health care record
3 pertaining to the administration of medication, or
4 treatments ordered for the patient, or pertaining to
5 services for the prevention or treatment of decubitus
6 ulcers or contractures, or pertaining to tests and
7 measurements of vital signs, or notations of input and
8 output of fluids, that was made with the knowledge that
9 the records falsely reflect the condition of the resident or
10 the care or services provided.

11 (3) “Willful material omission,” as used in this section,
12 means the willful failure to record any untoward event
13 that has affected the health, safety, or security of the
14 specific patient, and that was omitted with the knowledge
15 that the records falsely reflect the condition of the
16 resident or the care or services provided.

17 (g) A violation of subdivision (e) may result in a civil
18 penalty not to exceed ten thousand dollars (\$10,000), as
19 specified in paragraphs (1) to (3), inclusive.

20 (1) The willful material falsification or willful material
21 omission is subject to a civil penalty of not less than two
22 thousand five hundred dollars (\$2,500) or more than ten
23 thousand dollars (\$10,000) in instances where the health
24 care record is relied upon by a health care professional to
25 the detriment of a patient by affecting the administration
26 of medications or treatments, the issuance of orders, or
27 the development of plans of care. In all other cases,
28 violations of this subdivision are subject to a civil penalty
29 not exceeding two thousand five hundred dollars
30 (\$2,500).

31 (2) Where the penalty assessed is one thousand dollars
32 (\$1,000) or less, the violation shall be issued and enforced,
33 except as provided in this subdivision, in the same
34 manner as a class “B” violation, and shall include the right
35 of appeal as specified in Section 1428. Where the assessed
36 penalty is in excess of one thousand dollars (\$1,000), the
37 violation shall be issued and enforced, except as provided
38 in this subdivision, in the same manner as a class “A”
39 violation, and shall include the right of appeal as specified
40 in Section 1428.

1 Nothing in this section shall be construed as a change
2 in previous law enacted by Chapter 11 of the Statutes of
3 1985 relative to this paragraph, but merely as a
4 clarification of existing law.

5 (3) Nothing in this subdivision shall preclude the state
6 department from issuing a class “A” or class “B” citation
7 for any violation that meets the requirements for that
8 citation, regardless of whether the violation also
9 constitutes a violation of this subdivision. However, no
10 single act, omission, or occurrence may be cited both as
11 a class “A” or class “B” violation and as a violation of this
12 subdivision.

13 (h) The director shall prescribe procedures for the
14 issuance of a notice of violation with respect to violations
15 having only a minimal relationship to patient safety or
16 health.

17 (i) Nothing in this section is intended to change
18 existing statutory or regulatory requirements governing
19 the ability of a licensee to contest a citation pursuant to
20 Section 1428.

21 (j) The department shall ensure that district office
22 activities performed under Sections 1419 to 1424,
23 inclusive, are consistent with the requirements of these
24 sections and all applicable laws and regulations. To ensure
25 the integrity of these activities, the department shall
26 establish a statewide process for the collection of
27 postsurvey evaluations from affected facilities *and utilize*
28 *this information to enhance surveyor competence*
29 *through additional training, evaluation, and supervision.*

30 (k) *The department shall convene a workgroup,*
31 *including, but not limited to, consumer provider and*
32 *organized labor representatives, to examine the process*
33 *used to determine when a facility has done what might*
34 *reasonably be expected to comply with a regulation. This*
35 *workgroup shall assess the department’s current*
36 *consideration of reasonableness in the issuance and*
37 *appeal of citations and, if necessary, identify appropriate*
38 *criteria for determining reasonableness and provide the*
39 *Legislature with specific recommendations of any*

1 required statutory changes related to this issue by July 1,
2 2000.

3 SEC. 16. Section 1424.05 is added to the Health and
4 Safety Code, to read:

5 1424.05. (a) (1) Notwithstanding Section 1424, this
6 section shall apply to a skilled nursing facility or an
7 intermediate care facility as defined in paragraph (2).

8 (2) For purposes of this section, the following
9 definitions shall apply:

10 (A) "Skilled nursing facility" shall have the same
11 meaning as specified in subdivision (c) of Section 1250.

12 (B) "Intermediate care facility" shall have the same
13 meaning as specified in subdivision (d) of Section 1250.

14 (b) Citations issued to skilled nursing or intermediate
15 care facilities shall be issued within one year of the date
16 the department was first notified of the violation, or
17 within one year of the date of the annual survey,
18 whichever is later.

19 (c) Notwithstanding subdivision (c) of Section 1424, a
20 skilled nursing facility or an intermediate care facility is
21 subject to a civil penalty in the amount of not less than
22 twenty-five thousand dollars (\$25,000) and not exceeding
23 fifty thousand dollars (\$50,000) for each class "AA"
24 violation as described in subdivision (c) of Section 1424.

25 (d) Notwithstanding subdivision (d) of Section 1424, a
26 skilled nursing facility or an intermediate care facility is
27 subject to a civil penalty in the amount of not less than five
28 thousand dollars (\$5,000) and not exceeding twenty-five
29 thousand dollars (\$25,000) for each class 'A' citation as
30 described in subdivision (d) of Section 1424.

31 (e) Notwithstanding subdivision (e) of Section 1424, a
32 skilled nursing facility or an intermediate care facility is
33 subject to a civil penalty in the amount of not less than five
34 hundred dollars (\$500) and not exceeding two thousand
35 five hundred dollars (\$2,500) for each class 'B' citation as
36 described in subdivision (e) of Section 1424.

37 (f) Notwithstanding subdivision (g) of Section 1424, in
38 cases in which a skilled nursing facility or an intermediate
39 care facility is subject to a civil penalty not to exceed ten
40 thousand dollars (\$10,000) for the willful material

1 *falsification or willful material omission in the health*
2 *record of a patient, the following applies:*

3 *(1) Where the penalty assessed is five thousand dollars*
4 *(\$5,000) or less, the violation shall be issued and enforced,*
5 *except as provided in subdivision (g) of Section 1424, in*
6 *the same manner as a class “B” violation, and shall include*
7 *the right of appeal as specified in Section 1428.05.*

8 *(2) Where the assessed penalty is in excess of five*
9 *thousand dollars (\$5,000), the violation shall be issued and*
10 *enforced, except as provided in subdivision (g) of Section*
11 *1424, in the same manner as a class ‘A’ violation, and shall*
12 *include the right of appeal as specified in Section 1428.05.*

13 *SEC. 17. Section 1428.05 is added to the Health and*
14 *Safety Code, to read:*

15 *1428.05. (a) Notwithstanding Section 1428, this*
16 *section shall apply to a skilled nursing facility or an*
17 *intermediate care facility as defined in subdivision (g).*

18 *(b) If the licensee of a facility desires to contest a*
19 *citation or the proposed assessment of a civil penalty, the*
20 *licensee shall choose from either of the following*
21 *alternatives:*

22 *(1) First post as security, in cash or cash equivalent, an*
23 *amount equal to the civil penalty indicated. After posting*
24 *security, the licensee shall use the processes described in*
25 *subdivision (c) of Section 1428. If upon the completion of*
26 *the appeals process, it is determined that the civil penalty*
27 *should be dismissed, waived, or reduced, the balance of*
28 *the security, after deduction of any applicable penalties,*
29 *shall remit back to the licensee. Any amount of the*
30 *security posted that is returned shall be returned with*
31 *interest accrued at a rate equal to the interest accrued in*
32 *the Pooled Money Investment Account.*

33 *(2) First use the processes described in subdivision (c)*
34 *of Section 1428. If upon completion of the process, the*
35 *citation and civil penalty is upheld, the licensee shall pay*
36 *the civil penalty with interest at the adjusted annual rate*
37 *established by the Franchise Tax Board pursuant to*
38 *Section 19521 of the Revenue and Taxation Code.*

39 *(c) When an appeal is terminated in favor of the*
40 *licensee, the department shall return the amount posted*

1 pursuant to subdivision (a), minus any penalties due,
2 within 10 days of written notice of the decision.

3 (d) Notwithstanding subdivision (h) of Section 1428,
4 an assessment of civil penalties against a facility subject to
5 this section for a class “B” violation shall be trebled and
6 collected for a second and subsequent violation for which
7 a citation of the same class was issued within any
8 18-month period. Trebling shall occur only if the first
9 citation issued within the 18-month period was issued in
10 the same class, a civil penalty was assessed, and a plan of
11 correction was submitted for the previous same-class
12 violation. Any other provisions of subdivision (h) of
13 Section 1428 that are not inconsistent with this
14 subdivision, shall apply.

15 (e) The requirement in subdivision (l) of Section 1428
16 that any costs or penalties assessed pursuant to this
17 chapter shall be paid within 30 days of the date the
18 decision becomes final shall not apply to skilled nursing
19 facilities.

20 (f) The prohibition in subdivision (l) of Section 1428
21 that no payment shall be withheld if the state department
22 determines that it would cause undue hardship to the
23 facility or to patients or residents of the facility shall not
24 apply to skilled nursing facilities.

25 (g) For purposes of this section, the following
26 definitions shall apply:

27 (1) “Skilled nursing facility” shall have the same
28 meaning as specified in subdivision (c) of Section 1250.

29 (2) “Intermediate care facility” shall have the same
30 meaning as specified in subdivision (d) of Section 1250.

31 SEC. 18. Section 1430 of the Health and Safety Code
32 is amended to read:

33 1430. (a) Except where the state department has
34 taken action and the violations have been corrected to its
35 satisfaction, any licensee who commits a class “A” or “B”
36 violation may be enjoined from permitting the violation
37 to continue or may be sued for civil damages within a
38 court of competent jurisdiction. ~~Such—These~~ actions for
39 injunction or civil damages, or both, may be prosecuted
40 by the Attorney General in the name of the people of the

1 State of California upon his or her own complaint or upon
2 the complaint of any board, officer, person, corporation
3 or association, or by any person acting for the interests of
4 itself, its members or the general public. The amount of
5 civil damages which may be recovered in an action
6 brought pursuant to this section shall not exceed the
7 maximum amount of civil penalties which could be
8 assessed on account of the violation or violations.

9 (b) A resident or patient of a skilled nursing facility, as
10 defined in subdivision (c) of Section 1250, or *of an*
11 intermediate care ~~facilities~~ facility, as defined in
12 subdivision (d) of Section 1250, may bring a civil action
13 against the licensee of a facility who violates any rights of
14 the resident or patient as set forth in the Patients Bill of
15 Rights in Section 72527 of Title 22 of the California
16 Administrative Code. The suit shall be brought in a court
17 of competent jurisdiction. The licensee shall be liable for
18 the acts of the licensee's employees. The licensee shall be
19 liable for ~~up to~~ *an amount of one thousand dollars (\$1,000)*
20 *to two thousand five hundred dollars (\$2,500),*
21 *depending upon the severity of the violation,* and for costs
22 and attorney fees, and may be enjoined from permitting
23 the violation to continue. An agreement by a resident or
24 patient of a skilled nursing facility or *an* intermediate care
25 facility to waive his or her rights to sue pursuant to this
26 subdivision shall be void as contrary to public policy.

27 (c) The remedies specified in this section shall be in
28 addition to any other remedy provided by law.

29 *SEC. 19. Section 1436 of the Health and Safety Code*
30 *is amended to read:*

31 ~~1436. On or before July 1, 1974, the~~ (a) The state
32 department shall provide for additional and ongoing
33 training for inspectors charged with implementation of
34 this chapter in investigative techniques and standards
35 relating to the quality of care provided by long-term
36 health care facilities. The investigative-technique
37 element of such training shall be adopted after
38 consultation with the Department of Justice and such
39 investigative training may, but need not, be provided
40 through a contract with the Department of Justice.

1 ***(b) The department shall develop an interdisciplinary***
2 ***skilled nursing facility training program to educate and***
3 ***inform skilled nursing facility staff, inspectors, and***
4 ***advocates. This training program shall be implemented***
5 ***separately from the training programs related to***
6 ***conducting inspections or surveys.***

7 SEC. 20 Section 1438 of the Health and Safety Code
8 is amended to read:

9 1438. The state department shall review the
10 effectiveness of the enforcement system in maintaining
11 the quality of care provided by long-term health care
12 facilities and shall submit a report to the Legislature on
13 enforcement activities, on or before December 1, 2000,
14 and annually thereafter, together with any
15 recommendations of the state department for additional
16 legislation which it deems necessary to improve the
17 effectiveness of the enforcement system or to enhance
18 the quality of care provided by long-term health care
19 facilities.

20 ~~SEC. 20.~~

21 SEC. 21. Section 1599.1 of the Health and Safety Code
22 is amended to read:

23 1599.1. Written policies regarding the rights of
24 patients shall be established and shall be made available
25 to the patient, to any guardian, next of kin, sponsoring
26 agency or representative payee, and to the public. Those
27 policies and procedures shall ensure that each patient
28 admitted to the facility has the following rights and is
29 notified of the following facility obligations, in addition to
30 those specified by regulation:

31 (a) The facility shall employ an adequate number of
32 qualified personnel to carry out all of the functions of the
33 facility.

34 (b) Each patient shall show evidence of good personal
35 hygiene, be given care to prevent bedsores, and measures
36 shall be used to prevent and reduce incontinence for each
37 patient.

38 (c) The facility shall provide food of the quality and
39 quantity to meet the patients' needs in accordance with
40 physicians' orders.

1 (d) The facility shall provide an activity program
2 staffed and equipped to meet the needs and interests of
3 each patient and to encourage self-care and resumption
4 of normal activities. Patients shall be encouraged to
5 participate in activities suited to their individual needs.

6 (e) The facility shall be clean, sanitary, and in good
7 repair at all times.

8 (f) A nurses' call system shall be maintained in
9 operating order in all nursing units and provide visible
10 and audible signal communication between nursing
11 personnel and patients. Extension cords to each patient's
12 bed shall be readily accessible to patients at all times.

13 (g) If a facility has a significant beneficial interest in an
14 ancillary health service provider or if a facility knows that
15 an ancillary health service provider has a significant
16 beneficial interest in the facility, as provided by
17 subdivision (a) of Section 1323, or if the facility has a
18 significant beneficial interest in another facility, as
19 provided by subdivision (c) of Section 1323, the facility
20 shall disclose that interest in writing to the patient, or his
21 or her representative, and advise the patient, or his or her
22 representative, that the patient may choose to have
23 another ancillary health service provider, or facility, as
24 the case may be, provide any supplies or services ordered
25 by a member of the medical staff of the facility.

26 (h) A facility is not required to make any disclosures
27 required by this subdivision to any patient, or his or her
28 representative, if the patient is enrolled in an
29 organization or entity which provides or arranges for the
30 provision of health care services in exchange for a prepaid
31 capitation payment or premium.

32 (i) (1) A resident of a ~~nursing~~ *skilled nursing or*
33 *intermediate care* facility may appeal the facility's refusal
34 to readmit him or her, if the resident has been
35 hospitalized in an acute care hospital and asserts a right
36 to readmission pursuant to bed hold provisions or
37 readmission rights of either state or federal law. The
38 appeal shall be adjudicated by the state hearing officers
39 designated to adjudicate appeals of transfers and
40 discharges of nursing facility residents.

(2) The ~~nursing~~ facility shall readmit any resident who has filed an appeal under this subdivision, pending the final determination of the hearing officer, except when the patient's physician in the hospital recommends that the patient be transferred to another facility that provides a ~~higher~~ *more appropriate* level of care than the ~~nursing~~ facility. At the request of the ~~nursing~~ facility, the hearing shall be within seven days of the date of the readmission of the resident.

~~SEC. 21. Section 7183 of the Health and Safety Code is amended to read:~~

~~7183. (a) Complete patient medical records required of a health facility pursuant to regulations adopted by the department in accordance with Section 1275 shall be kept, maintained, and preserved with respect to the requirements of this chapter when an individual is pronounced dead by determining that the individual has sustained an irreversible cessation of all functions of the entire brain, including the brain stem.~~

~~(b) A nursing facility shall provide to the coroner of the county in which it is located within 16 hours of a request by the coroner copies of medical records of a deceased resident that cover the last year prior to the resident's death.~~

~~SEC. 22. Section 14124.7 of the Welfare and Institutions Code is amended to read:~~

~~14124.7. (a) No long-term health care facility participating as a provider under the Medi-Cal program shall transfer within the facility, or seek to evict out of the facility, any resident as a result of the resident changing his or her manner of purchasing the services from private payment or Medicare to Medi-Cal, except that a facility may transfer a resident from a private room to a semi-private room if the resident changes to Medi-Cal payment status. This section applies to residents who have made a timely and good faith application for Medi-Cal benefits and for whom an eligibility determination has not yet been made.~~

~~(b) This section does not apply to any resident of a skilled nursing facility or intermediate care facility,~~

~~1 receiving respite care services, as defined in Section
2 1418.1 of the Health and Safety Code, unless it is already
3 being provided through a medicaid waiver program
4 pursuant to Section 1396n of Title 42 of the United States
5 Code, or is already allowed as a covered service by the
6 Medi-Cal program.~~

~~7 SEC. 23. (a) The State Department of Health
8 Services, no later than July 1, 2001, shall develop and
9 implement a method for providing Medi-Cal
10 reimbursement to long-term health care facilities,
11 excluding distinct part nursing facilities, as described in
12 Sections 1250.8 and 1254 of the Health and Safety Code,
13 that is based on the medical and mental health needs of
14 the patient.~~

~~15 (b) (1) The department shall develop a method for
16 classifying residents based on the resource utilization
17 group system or other appropriate classification system.~~

~~18 (2) Standards of service, including number of patient
19 contact hours by licensed personnel, shall be linked as
20 appropriate to each classification.~~

~~21 (c) No later than July 1, 2001, the department shall
22 propose to the Legislature a system of bonus payments to
23 long-term health care facilities that provide an
24 extraordinary level of service to their residents.~~

~~25 SEC. 22. Section 14126.02 is added to the Welfare and
26 Institutions Code, to read:~~

~~27 14126.02. (a) It is the intent of the Legislature to
28 replace the current flat-rate Medi-Cal long-term care
29 reimbursement system with a system that ensures
30 individual access to appropriate long-term care services,
31 promotes quality resident care, advances decent wages
32 and benefits for nursing home workers, supports provider
33 compliance with all applicable state and federal
34 requirements, and encourages administrative efficiency.~~

~~35 (b) (1) By January 1, 2001, the department shall
36 develop, and once enacted shall implement, the new
37 Medi-Cal reimbursement system described in this section
38 for skilled nursing facilities, excluding distinct part
39 nursing facilities, as described in Sections 1250.8 and 1254~~

1 of the Health and Safety Code, that is based on the
2 medical and mental health needs of the resident.

3 (2) The new system shall be developed in consultation
4 with recognized experts, provider associations, consumer
5 advocates, labor organizations, and the federal Health
6 Care Financing Administration.

7 (3) The department shall submit a formal legislative
8 proposal for statutory changes related to the new system
9 no later than January 1, 2001.

10 (4) The new system shall be based on cost components
11 that reflect direct resident care, indirect resident care,
12 facility property, and any other components the
13 department may deem appropriate. For each
14 component, the department shall provide specific
15 reimbursement methodologies. The daily rates payable
16 under each of these cost components shall be capped at
17 levels consistent with the goals of this section, including
18 reasonable cost containment and the provision of funding
19 necessary to meet the needs of the residents.

20 (5) The enabling legislation shall take effect upon the
21 enactment of the Legislature.

22 (c) The daily rates established by the department shall
23 comply with the following requirements:

24 (1) The daily rates shall be adjusted for acuity based on
25 individual resident care needs.

26 (2) (A) The daily rates shall reflect the updated cost
27 of meeting individual resident care needs.

28 (B) Individual resident care needs shall be assessed
29 through the minimum data set (MDS) and other factors
30 the department may deem appropriate.

31 (C) Residents may be classified by specific categories
32 based on the resource utilization group (RUG) system
33 and other factors the department may deem appropriate.

34 (D) In establishing the specific categories, the
35 department shall consider a separate assessment,
36 categorization, and reimbursement methodology for
37 special populations including, but not limited to,
38 residents with behavioral health problems, Alzheimer's
39 disease, and developmental disabilities.

1 (3) (A) The acuity adjustment methodology shall
2 ensure that any enhanced reimbursement is tied directly
3 to increases in direct care staffing necessary to provide
4 the appropriate level of services.

5 (B) In determining the direct care rate component,
6 the department shall take into account reasonable costs
7 of wage and benefit increases for personnel.

8 (4) The facility property cost component shall take
9 into account capital-related and facility utilization cost
10 factors to be determined by the department, reasonable
11 renovation costs, and a reasonable return on investment.
12 In formulating the facility property cost component, the
13 department shall take into account the public interest in
14 maximizing the use of Medi-Cal funds for the provision
15 and improvement of direct and indirect care.

16 (d) The department shall create a method for the
17 evaluation and prospective adjustment of
18 reimbursement rates.

19 (e) The rates established by the department pursuant
20 to this section shall be based on the rate components
21 specified in this section and regional economic
22 differences in nursing home costs. The rates may also
23 reflect any of the following:

24 (1) Information and projections reflective of industry
25 economic factors and trends in California, including, but
26 not limited to, Office of Statewide Health Planning and
27 Development Aggregate Long-Term Care Financial
28 Data and the United States Bureau of Labor Statistics
29 Producer Price Index.

30 (2) An annual process to evaluate each component of
31 the rate consistent with factors set forth in this section.

32 (3) Cost studies conducted at least every five years
33 with rates adjusted according to cost findings and the
34 requirements of this section.

35 (f) The department shall establish an ongoing medical
36 and financial review process to validate the accuracy in
37 conducting and reporting of resident assessments,
38 staffing utilization, and financial reporting requirements
39 under the new reimbursement methodology.

1 (g) (1) Notwithstanding any other provision of law,
2 preliminary rates shall be published six months prior to
3 the implementation of the rates to allow providers an
4 opportunity to evaluate operational impact and adapt to
5 the new system.

6 (2) Providers that are unable to adapt without adverse
7 impact on their employees or residents shall be
8 reimbursed at existing rates for an additional year.

9 (h) The department shall establish the minimum
10 number of nursing hours for skilled nursing facilities on
11 the basis of resident care needs as assessed, classified, and
12 reimbursed under this section and shall implement these
13 standards concurrent with the implementation of the
14 new system. Providers shall fully comply with these
15 standards within six months of implementation.

16 (i) The department shall establish an ongoing medical
17 review and financial audit process to determine the
18 accuracy of facility conducting and reporting of resident
19 assessments, staffing utilization, and financial
20 information requirements of the department.

21 (j) The department may consult with the University of
22 California and any other appropriate research institutions
23 to explore factors that may be used in restructuring the
24 reimbursement methodology including, but not limited
25 to, the feasibility of incorporating quality indicators into
26 the reimbursement methodology.

27 (k) The department shall implement an automated
28 utilization control system for both facility and ancillary
29 services utilizing minimum data set information available
30 to the department through existing technology.

31 (l) The total reimbursement to skilled nursing
32 facilities under the Medi-Cal program shall comply with
33 the applicable provisions of the state medicaid plan and
34 shall be subject to an appropriation by the Legislature.

35 SEC. 23. Section 15630 of the Welfare and Institutions
36 Code is amended to read:

37 15630. (a) Any person who has assumed full or
38 intermittent responsibility for care or custody of an elder
39 or dependent adult, whether or not that person receives
40 compensation, including administrators, supervisors, and

1 any licensed staff of a public or private facility that
2 provides care or services for elder or dependent adults,
3 or any elder or dependent adult care custodian, health
4 practitioner, or employee of a county adult protective
5 services agency or a local law enforcement agency is a
6 mandated reporter.

7 (b) (1) Any mandated reporter, who, in his or her
8 professional capacity, or within the scope of his or her
9 employment, has observed or has knowledge of an
10 incident that reasonably appears to be physical abuse,
11 abandonment, isolation, financial abuse, or neglect, or is
12 told by an elder or dependent adult that he or she has
13 experienced behavior constituting physical abuse,
14 abandonment, isolation, financial abuse, or neglect, or
15 reasonably suspects abuse shall report the known or
16 suspected instance of abuse by telephone immediately or
17 as soon as practically possible, and by written report sent
18 within two working days, as follows:

19 (A) (i) If the abuse has occurred in a long-term care
20 facility, except a state mental health hospital or a state
21 developmental center, the report shall be made to the
22 local ombudsman or the local law enforcement agency.

23 ~~Except—~~

24 (ii) *Except* in an emergency, the local ombudsman
25 and the local law enforcement agency shall report any
26 case of known or suspected abuse *under this*
27 *subparagraph* to the State Department of Health Services
28 ~~and~~.

29 (iii) *Except in an emergency, the department, the*
30 *local ombudsman, and the local law enforcement agency*
31 *shall report* any case of known or suspected criminal
32 *activity related to abuse under this subparagraph* to the
33 Bureau of Medi-Cal Fraud, as soon as is practical *unless it*
34 *appears that any delay would cause destruction of*
35 *evidence or any other disturbance of a crime scene by*
36 *nonpeace officer personnel, in which case, the report*
37 *shall be made immediately.*

38 (B) If the suspected or alleged abuse occurred in a
39 state mental health hospital or a state developmental
40 center, the report shall be made to designated

1 investigators of the State Department of Mental Health
2 or the State Department of Developmental Services or to
3 the local law enforcement agency.

4 Except in an emergency, the local law enforcement
5 agency shall report any case of known or suspected
6 criminal activity to the Bureau of Medi-Cal Fraud, as soon
7 as is practical.

8 (C) If the abuse has occurred any place other than one
9 described in subparagraph (A), the report shall be made
10 to the adult protective services agency or the local law
11 enforcement agency.

12 (2) (A) A mandated reporter shall not be required to
13 report, as a suspected incident of abuse, as defined in
14 Section 15610.07, an incident where all of the following
15 conditions exist:

16 (i) The mandated reporter has been told by an elder
17 or dependent adult that he or she has experienced
18 behavior constituting physical abuse, abandonment,
19 isolation, financial abuse, or neglect.

20 (ii) The mandated reporter is not aware of any
21 independent evidence that corroborates the statement
22 that the abuse has occurred.

23 (iii) The elder or dependent adult has been diagnosed
24 with a mental illness, defect, dementia, or incapacity, or
25 is the subject of a court-ordered conservatorship because
26 of a mental illness, defect, dementia, or incapacity.

27 (iv) The mandated reporter reasonably believes that
28 the abuse did not occur.

29 (B) This paragraph shall not be construed to impose
30 upon mandated reporters a duty to investigate a known
31 or suspected incident of abuse and shall not be construed
32 to lessen or restrict any existing duty of mandated
33 reporters.

34 (3) (A) In a long-term care facility, a mandated
35 reporter shall not be required to report as a suspected
36 incident of abuse, as defined in Section 15610.07, an
37 incident where all of the following conditions exist:

38 (i) The mandated reporter is aware that there is a
39 proper plan of care.

1 (ii) The mandated reporter is aware that the plan of
2 care was properly provided or executed.

3 (iii) A physical, mental, or medical injury occurred as
4 a result of care provided pursuant to clause (i) or (ii).

5 (iv) The mandated reporter reasonably believes that
6 the injury was not the result of abuse.

7 (B) This paragraph shall not be construed to require
8 a mandated reporter to seek, nor to preclude a mandated
9 reporter from seeking, information regarding a known or
10 suspected incident of abuse prior to reporting. This
11 paragraph shall apply only to those categories of
12 mandated reporters that the State Department of Health
13 Services determines, upon approval by the Bureau of
14 Medi-Cal Fraud and the state long-term care
15 ombudsman, have access to plans of care and have the
16 training and experience necessary to determine whether
17 the conditions specified in this section have been met.

18 (c) (1) Any mandated reporter who has knowledge
19 of, or reasonably suspects that, types of elder or
20 dependent adult abuse for which reports are not
21 mandated have been inflicted upon an elder or
22 dependent adult or that his or her emotional well-being
23 is endangered in any other way, may report the known or
24 suspected instance of abuse.

25 (2) (A) If the suspected or alleged abuse occurred in
26 a long-term care facility other than a state mental health
27 hospital or a state developmental center, the report may
28 be made to the long-term care ombudsman program.
29 ~~Except~~

30 (B) *Except* in an emergency, the local ombudsman
31 shall report any case of known or suspected abuse *under*
32 *this paragraph* to the State Department of Health
33 Services ~~and~~.

34 (C) *Except in an emergency, the department, the*
35 *local ombudsman, and the local law enforcement agency*
36 *shall report* any case of known or suspected criminal
37 *activity related to abuse under this paragraph* to the
38 Bureau of Medi-Cal Fraud, as soon as is practical *unless it*
39 *appears that any delay would cause destruction of*
40 *evidence or any other disturbance of a crime scene by*

1 *nonpeace officer personnel, in which case, the report*
2 *shall be made immediately.*

3 (3) If the suspected or alleged abuse occurred in a
4 state mental health hospital or a state developmental
5 center, the report may be made to the designated
6 investigator of the State Department of Mental Health or
7 the State Department of Developmental Services, or to
8 a local law enforcement agency or to the local
9 ombudsman. Except in an emergency, the local
10 ombudsman and the local law enforcement agency shall
11 report any case of known or suspected criminal activity
12 to the Bureau of Medi-Cal Fraud, as soon as is practical.

13 (4) If the suspected or alleged abuse occurred in a
14 place other than a place described in paragraph (2) or
15 (3), the report may be made to the county adult
16 protective services agency.

17 (5) If the conduct involves criminal activity not
18 covered in subdivision (b), it may be immediately
19 reported to the appropriate law enforcement agency.

20 (d) When two or more mandated reporters are
21 present and jointly have knowledge or reasonably suspect
22 that types of abuse of an elder or a dependent adult for
23 which a report is or is not mandated have occurred, and
24 when there is agreement among them, the telephone
25 report may be made by a member of the team selected
26 by mutual agreement, and a single report may be made
27 and signed by the selected member of the reporting
28 team. Any member who has knowledge that the member
29 designated to report has failed to do so shall thereafter
30 make the report.

31 (e) A telephone report of a known or suspected
32 instance of elder or dependent adult abuse shall include
33 the name of the person making the report, the name and
34 age of the elder or dependent adult, the present location
35 of the elder or dependent adult, the names and addresses
36 of family members or any other person responsible for the
37 elder or dependent adult's care, if known, the nature and
38 extent of the elder or dependent adult's condition, the
39 date of the incident, and any other information, including
40 information that led that person to suspect elder or

1 dependent adult abuse, requested by the agency
2 receiving the report.

3 (f) The reporting duties under this section are
4 individual, and no supervisor or administrator shall
5 impede or inhibit the reporting duties, and no person
6 making the report shall be subject to any sanction for
7 making the report. However, internal procedures to
8 facilitate reporting, ensure confidentiality, and apprise
9 supervisors and administrators of reports may be
10 established, provided they are not inconsistent with this
11 chapter.

12 (g) (1) Whenever this section requires a county adult
13 protective services agency to report to a law enforcement
14 agency, the law enforcement agency shall, immediately
15 upon request, provide a copy of its investigative report
16 concerning the reported matter to that county adult
17 protective services agency.

18 (2) Whenever this section requires a law enforcement
19 agency to report to a county adult protective services
20 agency, the county adult protective services agency shall,
21 immediately upon request, provide a copy of its
22 investigative report concerning the reported matter to
23 that law enforcement agency.

24 (3) The requirement to disclose investigative reports
25 pursuant to this subdivision shall not include the
26 disclosure of social services records or case files that are
27 confidential, nor shall this subdivision be construed to
28 allow disclosure of any reports or records if the disclosure
29 would be prohibited by any other provision of state or
30 federal law.

31 (h) Failure to report physical abuse, abandonment,
32 isolation, financial abuse, or neglect of an elder or
33 dependent adult, in violation of this section, is a
34 misdemeanor, punishable by *imprisonment for* not more
35 than six months in the county jail or by a fine of not more
36 than one thousand dollars (\$1,000), or by both that fine
37 and imprisonment. Any mandated reporter who willfully
38 fails to report physical abuse, abandonment, isolation,
39 financial abuse, or neglect of an elder or dependent adult,
40 in violation of this section, where that abuse results in

1 death or great bodily injury, ~~is punishable~~ shall be
2 punished by imprisonment for not more than one year in
3 a county jail or by a fine of not more than five thousand
4 dollars (\$5,000) or by both that fine and imprisonment.

5 SEC. 24. It is the intent of the Legislature to study the
6 manner in which long-term health care facilities that
7 participate as providers under the Medi-Cal program
8 make transfers within the facility, or evict out of the
9 facility, any resident as a result of the resident changing
10 his or her manner of purchasing the services from private
11 payment to Medicare to Medi-Cal.

12 SEC. 25. It is the intent of the Legislature to strive for
13 uniformity and consistency in its statewide practices in
14 surveying skilled nursing facilities so that variations will
15 be lessened.

16 SEC. 26. (a) The Legislature finds and declares all of
17 the following:

18 (1) There are over 1,150 volunteer long-term care
19 ombudsmen in California.

20 (2) For over 20 years, long-term care ombudsmen
21 have advocated on behalf of individuals living in 1,200
22 nursing homes and 5,800 residential care facilities for the
23 elderly.

24 (3) These volunteers are responsible for reporting
25 elder abuse, witnessing advance directives, and
26 investigating and resolving care complaints.

27 (4) There are 1,800,000 Californians at the age of
28 greatest vulnerability to institutionalization.

29 (5) Long-term care ombudsman programs have
30 become an integral part of long-term care, offering
31 people support, assistance, and care options during their
32 time of need.

33 (b) The week commencing on the first Monday of May
34 shall be proclaimed as "Long-Term Care Ombudsman
35 Week" in recognition of the valuable services provided
36 by long-term care ombudsmen.